DEVELOPMENT OF LEGISLATION IN OHIO THAT RELATES TO AGRICULTURE

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DEVELOPMENT OF LEGISLATION IN OHIO THAT RELATES TO AGRICULTURE[1]

INTRODUCTION

Nearly two centuries ago (1748) the French philosopher Montesquieu wrote: "Law in general is human reason inasmuch as it governs all the habitants of the earth; the political and civil laws of each nation ought to be only the particular cases in which human reason is applied." In discussing the application of laws further he said: "They should be relative to the climate of each country, to the quality of the soil, to its situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds."(2)

The development of Ohio's laws relating to agriculture illustrates the principles Montesquieu had in mind, for to a large extent law is accepted custom reinforced by the endorsement of the State. In this respect law may be said to follow and not to lead. But legislation at times goes farther than this, for there are circumstances where the State must organize and implement an activity before it can become a practice. A characteristic of our times is the fact that people often use the State as an agency to develop some economic or social activity which individual initiative cannot perform. As society becomes more complex and as our country becomes older, inescapable new problems emerge, the solution of which in some way calls for legislation. We do not know just what turns these events may take in the future, but it is at least interesting to trace some of these legal developments through the years up to the present time so far as they relate to agriculture.

In the 135 years of our history as a State the people of Ohio have adopted a mass of legislation dealing with agriculture. No attempt is made in this bulletin to cover all of these laws which touch upon practically all acts of our everyday lives. Little will be said about the contractual relationships of individual with individual. The principal purpose in this publication is to trace only the development of legislation intended in some way to promote the interests of agriculture and the public welfare, through regulation and control under the police power of the State, through the authorization of various types of voluntary associations, and finally, through the creation of certain public institutions or publicly managed services administered by some department of the State or its subdivisions.

In carrying out this purpose constant reference must be made to the various legislative Acts of the General Assembly but the intention is not to make a verbatim report or brief of the laws but rather to record the significant facts which the law contains. The following points seem to be important: (1) the reason for enacting a law; (2) the changes found necessary

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(1) Much of the material in this bulletin is summarized in a shorter publication, Mimeograph Bulletin No. 111, entitled "TRENDS IN PUBLIC POLICY AFFECTING AGRICULTURE - As Interpreted From Legislative Developments in Ohio".

(2) Montesquieu, the Spirit of the Laws, Book 1, Ch. 3, p. 7.

from time to time to make the law fit existing conditions, (3) the facts of the law at present; and (4) the results accomplished when these are measurable. One further step may at times be expressed or implied: namely, possible future legislation to fit conditions which now seem to be developing.

AGRICULTURAL EDUCATION

Agricultural Societies[1]

Early in the history of our State, farmers recognized the need of some type of group activity for the benefit of agriculture. This first took the form of societies organized on a county or smaller area basis to promote the development of agriculture and also occasionally industrial and mechanical arts. The principal activity was the promotion of agricultural fairs and the main objective was education. Due to the fact that much of the later development of public activity related to agriculture was in some way associated with these agricultural societies their early history is of interest alike for the sake of what they originally represented and for what developed from them.

The first agricultural society in Ohio of which we have any record was organized at Youngstown at least as early as 1818. An agricultural and mechanical society was organized in Washington County, Ohio and Wood County, Virginia, in 1819 and held a fair at Marietta in 1828. The Cincinnati Society for the promotion of agriculture, manufactories, and domestic economy was organized in 1819 and held the first agricultural fair in September 1820. The above organizations and perhaps others predated any legislation intended to aid or encourage agricultural societies. This first legislation came in January 1828 in the form of an Act incorporating the Agricultural Society of Geauga County. The Act provided that funds of the society could be used only for the purchase of personal and real property, the erection of buildings, incidental expenses and the payment of premiums.

In January 1829 the Legislature incorporated the Muskingum County Agricultural and Manufacturing Society and limiting the use of funds to the promotion of "agriculture and manufactories".

In February 1829 an Act was passed incorporating the Agricultural Society of Portage County. The provisions relative to the use of funds were similar to those applying to the Geauga County Society.

The Hamilton County Agricultural Society was incorporated in January 1831 to promote the interests of agriculture and manufactories.

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(1) The early history of agricultural societies has been taken from the bulletin "Agricultural Laws of Ohio" compiled by the Legislative Reference Bureau and published by the Board of Library Commissioners of Ohio in 1915.

The next development in legislation was in 1833 when a general Act was passed to "authorize and encourage the establishment of agricultural societies in the several counties of the State and for other purposes". The county commissioners were required to provide for a public meeting in June of 1833 and annually thereafter if necessary for the purpose of organizing an agricultural society in the county. Not more than $50 could be appropriated annually by the commissioners to aid the society. In 1835 the Act was amended to allow adjacent counties to unite in their sponsorship of an agricultural society.

In 1846 the Act of 1833 was replaced by another Act to provide for the support of county and district agricultural societies through an annual appropriation not to exceed $200, by the county commissioners. The same Act provided for the creation of a State Board of Agriculture composed of 53 members, the subsequent development of which is discussed under the State Department of Agriculture.

In 1853 county agricultural societies were made corporate bodies and authorized to purchase real estate and improve it. In 1856 revenue up to $600 annually from the sale of escheated lands was reserved to the agricultural society of a county, the remaining revenue if any, going to the State Board of Agriculture. This encouragement resulted in the organization of 71 county agricultural societies by 1858.

In 1871 the county commissioners were authorized to levy a one-half mill property tax to purchase or lease fair grounds, provided the levy was approved by a majority vote at a general election.

While discussing agricultural societies and their principal activity, agricultural fairs, it may be observed that in 1884 the State Board of Agriculture was empowered to issue up to $80,000 bonds for State fair ground improvement. Two years later the annual fair was first held on its present site. For twelve years previous to 1886 it had been held at Franklin Park in Columbus. From 1850 to 1873 inclusive, the fair had been held at various points over the State.

A considerable amount of legislation relative to agricultural societies has been enacted in the last half century, but the purpose of such societies has not changed to any great extent. The county is usually accepted as the logical geographical and administrative unit for such organizations whose most important function is the holding of an annual fair. However, the law provides for some support of independent societies organized on a smaller basis than the area of a county. A further explanation of the features of organization is made below through discussing the features of the present law.

Features of the present law relating to agricultural societies.- Such a society is legally a private corporation not for profit although in view of the public interest served, some privileges are conferred which are characteristic of public corporations, e.g. support through taxation and the right to condemn property. Most of the law relative to agricultural societies is contained in sections 9880 to 9913 of the General Code of which the following is a brief synopsis.

Thirty or more persons, residents of a county, can organize a society which, when the State laws and the rules of the State Board of Agriculture are complied with, and having held an annual exhibition, at which premiums are awarded exhibitors, is entitled to draw $800 annually from the county treasury. This rule applies alike to county societies, independent societies, and to joint societies representing not more than three counties. In the latter instance the $800 is prorated according to the population of the counties represented. Some support is obtained from the annual membership fees.

A society is managed by a board of at least eight directors elected by the members for a term of office fixed by the State Board. In case a society spends at least $100 for the support of junior club work in the county the expense up to $500 must be met by the county treasury.

The sale of liquor, the conduct of gambling games, and immoral shows are unlawful on fairgrounds. As a medium of control all concessionaries must obtain a license from the Director of Agriculture whose duty it is to enforce the law and to make rules and regulations as necessary. The fees for these licenses are paid into the State treasury.

County societies may purchase real estate. But if the county has contributed money the property cannot be mortgaged without the commissioners' consent. As an aid to the society, the county commissioners can purchase real estate or lease it for a term of not less than twenty years and erect buildings. Title to fair grounds may be held by the county or by the agricultural society. In either case the control and management is by the board of directors of the society so long as annual fairs are held. In case a society ceases to exist the title to the real estate is vested in the county, provided the county has made payments for the purchase or improvements.

Money realized from rents, leases, etc., in excess of operating expenses, must be used to keep the buildings and grounds in repair. The buildings must be kept insured by the county commissioners for the benefit of the society.

In case the directors of a county agricultural society deem it necessary to enlarge the fair grounds and are unable to make a purchase agreement, the land can be appropriated under the same proceedings used by municipal corporations.

Other contributions by the county.- Upon request by the county agricultural society the county commissioners shall annually appropriate a minimum of $1500 and a maximum of $2000 for the use of the society. When no county society exists, an independent society can similarly obtain from $500 to $2000 from the county. When a county agricultural society is indebted $15,000 or more, a majority vote of the electors authorizes the commissioners to issue county bonds to pay the debt and a tax levy can be used to retire the bonds over a period of ten to twenty years.

County commissioners can spend up to $10,000 a year to purchase or lease land or erect buildings for the use of the agricultural society. If more than $10,000 need be so spent in any one year, a tax levy to cover the expense must be approved by a majority vote of the people.

Public Schools Established

Congress established what then appeared to be a liberal policy of public education in the North West Territory before Ohio became a State. One section for each township was set aside to support common schools; nor was higher education neglected. Two townships were set aside to found a university at Athens. The bounds of the campus were surveyed in 1792, a charter drawn up in 1802 and the institution opened in 1809. The Ohio Legislature assumed sponsorship by an Act in 1804, changing the name of the proposed institution from American University to Ohio University. The history of the founding of Miami University at Oxford is similar. It was organized in 1809 with a land grant of one township and was opened in 1818. A State system of common schools was provided in 1825. Previous to that date, common schools were on a subscription basis, the school land rentals being prorated to the individual scholars attending school in a township as a premium to apply on their tuition expense.

Although the common schools and the above two institutions for higher education were sponsored by government to serve a people principally engaged in agriculture, no instruction was given primarily for agriculture as a vocation. The need for such was not felt until later; but after the land had been cleared and farms established attention was focused on numerous agricultural problems which emerged.

The need for formal educational training in agriculture began to be expressed before 1850 by our agricultural leaders.(1) Our early agricultural societies were largely motivated to teach people informally better ways of production and the belief was current that crops, livestock, and other products showed progressive improvement due to the influence of these societies. However something else was needed. The thought was expressed by Doctor Norton S. Townshend in an address before the Hamilton County Agricultural Society in 1856, in the following words: "Ere long agricultural schools will be established for the purpose of giving to the young farmer a training for his occupation as thorough as that the professions have so far monopolized. It is a great pleasure to me to know that this county has within its limits an institution, Farmers' College, where agricultural science is taught. Such an institution is not simply a benefit to the surrounding region, but an honor to the State. At Cleveland is also an agricultural school, the Ohio Agricultural College. xxxxxx Such institutions ought to be multiplied until every agricultural student can obtain a thorough knowledge of all the sciences that relate to his calling; then he can take his appropriate place with scholars and men of science without a blush. Agriculture is the foundation of our national prosperity; let us make its pursuit as instructive and honorable as it is useful." Ohio Agricultural Report, 1856, p. 362.

Similar sentiments were expressed by John H. Klippart, Corresponding Secretary of the State Board of Agriculture in his Annual Report in 1857. He cited the fact that Agricultural Colleges had been established by state support in France, Switzerland, England, and Germany; also, in Michigan, Maryland, Pennsylvania, New York, Virginia, and Connecticut; that Kentucky, Georgia, and Tennessee had bills under consideration for the purpose of advancing agricultural education. He summarized his plea in these words:

(1) Allen Trimble, first President of the State Board of Agriculture, in his annual addresses in 1846 and 1848 emphasized this need and in 1848 specifically recommended that the Legislature establish an agricultural college and also one in the mechanical arts.

"The propriety of establishing an agricultural college by legislative authority is so manifest that no labored argument is necessary to sustain it. The present excellent system of common schools, established in the State by the Legislature is a sufficient guaranty that this question will meet with proper attention from those whose duty it is to guard with jealous care the interests confided to them, and to contribute in every legitimate way, for the promotion of the common interests of the people." Ohio Agricultural Report, 1857, p. 66.

The Ohio Agricultural and Mechanical College

The first important action in respect to formal agricultural education came in the form of the Congressional Act of July 2, 1862, The First Morrill Act. This established a new landmark in national policy through encouraging the various states to establish agricultural and mechanical colleges. The plan adopted was to grant the states public land or land scrip to be sold to prospective settlers, the proceeds to be used to found and support colleges. Ohio's allotment was the proceeds from the sale of 629,920 acres of the public domain. Ten per cent of the money could be used to purchase college or experiment farm sites, the remainder was to be placed in a perpetual trust fund of which only the interest could be used. Ohio's Legislature accepted February 9, 1864 (O.L. 61, p. 7) and the next Legislature authorized the sale of land scrip. O.L. 62, p. 189. The money was used to purchase Ohio State bonds and the six per cent interest credited to the Agricultural College Fund. Nothing more was done until 1870 which was the dead line for the establishment of a college or the money would revert to the Federal Government.

In passing, it may be mentioned that a heated controversy arose between 1862 and 1870 in respect to the method of using the Federal money made available for agricultural education; numerous small colleges offered to establish a professorship in agriculture if given aid by the State and this plan was strongly supported in the Legislature. On the other hand some of the farseeing agricultural leaders favored the founding of one strong state institution believing that this would allow specialization in teaching and research and thereby promote the interests of agriculture more effectively. Eventually, this second plan was adopted. Two Acts were passed in 1870, the enabling Act setting up the college administration, March 22; and another Act, passed April 18, authorized counties to levy a tax and issue bonds to secure the location of the college in the county. The assistance of Franklin County, which had raised $300,000, was accepted. O.L. 68, p. 13. The name Ohio Agricultural and Mechanical College was adopted and instruction began September 17, 1873. In 1878 the name was changed to Ohio State University.

The second Morrill Act, August 30, 1890, provided an annual appropriation of federal money received from the sale of public lands; $15,000 the first year increasing annually to $25,000 at the end of ten years. None of this money could be used for building purchase, erection, or repair. Another provision attached was that states accepting the money could not draw any distinction as to race or color of students unless a separate school be maintained for such.

Farmers' Institutes

In 1880, Mr. Chamberlain, Secretary of the State Board of Agriculture presented a report at the board's annual meeting in which he submitted plans for a system of Farmers' Institutes and monthly crop reporting. He asked for and received authority to cooperate with agricultural societies and granges in the organization of farmers' institutes or conventions. The board authorized him to expend $1000 for the purpose, the money coming from the earnings of the State Fair. The faculty of Ohio State University assisted the Agricultural Board and about forty institutes were held the first year. Popular response was so great that by 1890 the resources of the Agricultural Board would no longer meet the general expenses. This led to the legislative Act of 1890 to enable institutes to be supported by general taxation.

It may be mentioned that farmers' institutes represent the second important development aimed directly at adult education in agriculture; they were preceded by agricultural societies. Also the policy was that institutes, like the public schools, were open to all and not limited to any one class or locality.

The following list of institute lectures made in 1890 is a good indication of the character of such meetings:

(1) The Relation of Science to Agriculture
(2) The Fertilization of Plants by Bees and Other Insects
(3) Impurities in Drinking Water as a Cause of Disease
(4) What is Profit on the Farm?
(5) Fertilizers
(6) The Horse for Pleasure and Profit
(7) Spraying Fruit Trees
(8) Buying at Wholesale
(9) Organization in American Industry
(10) Railway Transportation
(11) A Talk on Taxation
(12) Is the Farmer Really as Bad Off as He Imagines He Is?
(13) The Higher Education of the Farmer
(14) Social Culture on the Farm

It should be mentioned that the Agricultural Experiment Station also sponsored independent farmers' institutes prior to 1913 when the work was merged with that of the Division of Institutes under the Department of Agriculture.

In 1890 the General Assembly passed an Act to provide "that when twenty or more persons, residents of any county in the State, organize themselves into a society to be called --------- farmers' institute, for the purpose of teaching better methods of farming, stock raising, fruit culture, and all branches of business connected with the industry of agriculture and adopt a constitution agreeable to the State Board of Agriculture, and when such society shall have elected proper officers and performed such other acts as may be required by the rules of the State Board of Agriculture, such society is deemed a body corporate". O.L. V. 87, p. 332; passed April 26, 1890.

The purpose of thus formalizing the local organizations was to establish groups which could utilize certain public funds authorized by the Act. The attending conditions were: (1) not more than three institute societies in any one county could be organized to receive aid under the Act. (2) the State Board of Agriculture would determine the number, name, time, and place of institutes. (3) up to $200 could be drawn from the county treasury annually for the support of institutes in any one county. Part of the money was payable to the State Board. (4) at least two lecturers would be furnished each authorized institute by the State Board of Agriculture. (5) farmers' clubs and granges could be approved by the State Board as legal organizations to conduct institutes as provided by the Act.

In 1896 the above Act was amended. The principal changes were:
(1) Four institute societies in each county could be organized under the Act.
(2) Not to exceed $250 could be drawn from the county treasury in any one year to support institutes.
(3) The state board of agriculture was to furnish speakers, but the number was not specified. O.L. V. 92, p. 330.

The law remained unchanged until 1913 when the number of "State-county institutes authorized in any one county was increased to four and the amount which could be drawn from the county treasury to aid institutes in any one year was limited to $300. O.L. V. 103, p. 339; G.C. Sec. 9917-9918.

An important change was made in 1915 when the organization of farmers' institutes was placed under the supervision of the Trustees of Ohio State University. O.L. V. 106, p. 356. The law was also amended to authorize five farmer institutes in each county but the total aid remained the same, $300. This sum could be drawn from the county treasury only after certification by the Dean of the College of Agriculture to the county auditor. Not exceeding $175 of the $300 is transferred to the Dean of the College of Agriculture to pay institute speakers supplied by the State and not more than $25 to each local institute society to apply on local expenses.

Agricultural Extension

The next step in agricultural education was the inauguration of agricultural extension work by the Act of March 9, 1909. O.L. 100, p. 11. The College of Agriculture was authorized and instructed to arrange to hold schools throughout the State for extension teaching in soil fertility, stock raising, crop production, dairying, horticulture, domestic science, and kindred subjects. The schools were not to exceed one week in length and only one per county could be held annually. Authority was also given for instruction and demonstrations at fairs, institutes, etc., for instruction by mail and for publication of extension bulletins. The original Act carried an appropriation of $20,000.

The above Act was amended in 1910 to authorize common carriers to transport college employees and equipment engaged in extension work, free or at reduced rates. O.L. 101, p. 356.

On May 8, 1914, an Act of Congress authorized cooperative agricultural extension work between the agricultural colleges in the various states and the United States Department of Agriculture. 38 U.S. Stat. p. 372. On May 19, 1915, the Ohio Legislature passed an Act to provide for the use of any federal money made available for extension work. O.L. V. 106, p. 357. It was further provided that when any county would raise at least $1000 to support a county agent one year that the State would add not to exceed $3000 when assured that the county commissioners would appropriate at least $1000 for a second year; or as an alternative, agree to establish and maintain a county experiment farm. The law authorized $1500 as the maximum appropriation the county commissioners could make to support a county agent in any one year.

The express purpose of this Act was to establish a local office to disseminate all the benefits of technical agriculture through application to local conditions of the knowledge assembled by the College of Agriculture, the Experiment Station, and the Federal Department of Agriculture. Cooperation with the supervisor of Agricultural Education of the State Department of Public Instruction was also provided in the original law.

The objective of the extension work by county agents as then conceived, was summarized in the closing paragraph of section 9921-3 in these words:

> "In short he shall be at the service of the farmers in the county and shall, as far as possible, carry to each and all of them the message of practical and scientific aid in their work."

The law of 1915 provided that if the commissioners of a county did not provide for an agricultural agent they could be directed to do so by a referendum vote of the electors following a petition signed by at least five per cent of the qualified electors. When so established the extension work could not be discontinued for five years.

The law relative to extension work was amended in 1929. O.L. V. 113, p. 82. The wording of the law was changed to specifically authorize the employment of home demonstration agents, boys' and girls' club agents, and such other employees as the trustees of the Ohio State University may deem necessary. It should be added that this change in the law came after these additional services were already well established under the less definite authority of the Act of 1914.

The section of the original law providing for a referendum vote on the employment of a n extension agent in a county was repealed in 1929. At the same time provision was made for a special county tax levy, if such be necessary, to support the work. Amounts appropriated by the county in excess of $3000 for each agent employed must have the unanimous consent of the county commissioners.

Since its inception agricultural extension work has been established in all Ohio counties. In order to aid the extension agents located in the various counties the extension service also includes a staff of subject matter specialists who supply the service of their technical training to the farmers of the State.

Agriculture in the Public Schools

By legislative act of February 28, 1911 Ohio provided that agriculture would be one of the branches taught in the common schools wherever State aid was used. O.L. 102, p. 38. The State was divided into four districts, each with a supervisor appointed by the State Commissioner of Common Schools. The plan of instruction was, of course, elementary as compared with the plan of vocational education coming a few years later.

Vocational Education.- This activity in its present form and scope is primarily the result of the Congressional (Smith-Hughes) Act of February 23, 1917. U. S. Stat. Vol. 39, p. 929. This act authorized annual federal aid to the states for vocational education in agriculture, home economics, and trades and industries, provided the states meet certain requirements including: (1) the federal grants must be matched dollar for dollar with state or local revenues. (2) the plan of education must be organized and supervised by a state board of vocational education subject to the approval of the federal board of vocational education. (3) the state must establish a place for vocational teacher training.

The Ohio Legislature passed the necessary legislation in the same year to implement the activity which is supervised by a division of the State Department of Education. O.L. 107, p. 579. Also 108, Pt. 1, p. 356.

Additional federal aid for vocational education has been granted from time to time, specifically under the George Reed Act and the George Ellzey Act. These were replaced by the George-Deen Act July 1, 1937, which provides that only 50 per cent of the federal fund need be matched by State and local funds in the beginning but increasing to 100 per cent at the end of a ten year period. U.S. Statutes at Large, Vol. 49, Part 1, p. 488.

The Ohio Agricultural Experiment Station

The Ohio Agricultural Experiment Station was established by legislation enacted April 17, 1882. O.L. 78, p. 113. The original Act recited "That for the benefit of the interests of practical and scientific agriculture, and for the development of the vast agricultural resources of the State, an Ohio Agricultural Experiment Station is established as hereinafter provided."

The management was given to a Board of Control of five members appointed by the Governor to serve for one year, or until successors were appointed. The Board of Control was to select a location for the Station and appoint a Director who, with the Governor, was to be an ex-officio member of the Board of Control. In 1913 the supervision of the Station was given to the Agricultural Commission but in 1915 a separate Board of Control was again authorized, and in 1921 this duty was turned over to the Trustees of Ohio State University and the State Director of Agriculture.

When established, the Station was operated entirely on State funds but in 1887 Congress authorized land-grant colleges to establish experiment stations and gave some federal aid. The Hatch Act - 24 U.S. Stat. p. 440. Since then the amount of federal aid has been gradually increased particularly in order to definitely sponsor the permanency of some lines of research. Specifically, three additional acts have been passed: the Adams Act in 1906, the Purnell Act in 1925, and the Bankhead-Jones Act in 1935.

In addition to the main station at Wooster, nine county and three district experiment farms are maintained at different locations in the State in order to conduct the experimental work in closer contact with local conditions.

To systemize the work, the present scientific staff is divided into ten departments, the names of which suggest the different lines of research conducted by the experiment station. These departments are: Agronomy (concerned with crops and soils), Animal Husbandry, Dairy, Botany, Plant Pathology (plant diseases), Entomology (insects), Rural Economics, Home Economics, Agricultural Engineering, Forestry, and Horticulture. The work at the Wooster experiment farm is closely correlated with that carried on at Ohio State University, some members of the Station staff being located at the University.

The purpose of the Station as stated in the present law is "for the prosecution of practical and scientific research in agriculture and forestry and the development of the agricultural resources of the State". G.C. 1170. Many of the duties of the Station have no need for enabling legislation in addition to the Act creating the Station. However, the duties of the Department of Forestry are more comprehensive and require additional description given at a later point under the chapter, Legislation Affecting Land Use.

County Experiment Farms.- These farms represent an activity established by local initiative but with a very close administrative tie-up with the Agricultural Experiment Station. Their history goes back to 1910 (O.L. 101, p. 125) but the movement was further considered in the Act of April 15, 1913 which created an Agricultural Commission and generally reorganized the administration of the State's agricultural activities. O.L. 103, p. 304. Sixteen counties voted on the subject in 1914, two favorably.

County commissioners are authorized to establish such farms to demonstrate, under local conditions, the work of the main Station. G.C. 1174. But the proceedings must be initiated by a petition signed by five per cent of the voters and then voted on at a general election, in case it is necessary to borrow money to establish the farm. G.C. 1116. A favorable vote on the proposition empowers the commissioners to levy a two-tenths mill tax for the purpose of establishing a farm and borrowing money in anticipation of the tax collections. G.C. 1177-1 and 2. The Board of Control of the Experiment Station must help the county commissioners select the farm. G.C. 1177-3.

The county must supply the initial equipment necessary to work the farm and a sufficient fund to operate it annually. But $2000 is the maximum annual appropriation. G.C. 1177-4.

The management of a county experiment farm is supervised by the Director of the Agricultural Experiment Station who appoints all employees and plans the operations, subject to the regulations of the Board of Control. G.C. 1177-5. But before entering on any line of experimentation or investigation, the plan must be submitted to an advisory board supplied by the county agricultural society or if there be no society, to the county commissioners, and no plan will be used if not approved. G. C. 1177-6.

The commissioners may, without a vote of the people, equip and assign a portion of a farm already owned by the county if the Board of Control agree to the arrangement. G.C. 1177-7.

Income from sales of farm produce are to be used to operate and improve the farm; but if there is a surplus in any year the money must be credited to the county. G.C. 1177-8. Or, when an experiment farm is discontinued, land and equipment must be sold and the money paid to the county. G.C. 1177-9.

The Agricultural Experiment Station is predominantly a research institution. Occasionally it has been given regulatory duties but the policy has been followed of placing most of these in the State Department of Agriculture with various bureaus organized specifically for the business of regulation. The most important exception exists in respect to forestry where the use of the police power in control of the forest fire menace, etc., is logically associated with other duties of management in forest areas.

REGULATORY LEGISLATION

Early Developments

At the present time we have many laws which in some way regulate the transactions between individuals. The enforcement of most of these laws that relate to agriculture and its products are administered by the State Department of Agriculture. Examples are the pure food laws which are intended to safeguard the purity and healthfulness of such products, the inspection and grading of products which serve to insure quality, the inspection of weights and measures, feeds, fertilizers, and seeds, the control of animal and plant diseases. The above are examples of things which experience has demonstrated need some type of public supervision in order that individual and public welfare be protected. It should not be assumed that restriction and regulation are new. Our pioneer fathers were not adverse to passing laws intended to regulate, and they did regulate and license wherever and whenever they thought it desirable. But pioneer conditions did not raise so many problems. The population was sparse, ideas on sanitation and disease were primitive, most industry and trade was local, natural resources were unexploited. The development of several regulatory laws will be discussed particularly in connection with the various duties of the State Department of Agriculture.

As a matter of historical interest the first regulation applied to grist mill tolls. As early as 1799 territorial law established the legal toll allowed millers for grinding grain. This law as amended in 1805, specified that one-tenth part of any wheat, rye, or other grain ground or bolted could be taken, at a grist mill using water power and a higher toll, one-eighth, at mills operated by horse power furnished by the miller. No provision for enforcement was provided. This law, slightly modified, is still in force.

On February 20, 1805, the Legislature passed an Act to provide for county inspectors, deputies, and packers of wheat and rye flour, corn, or buckwheat meal, biscuit, butter or hog lard, pork and beef, when these products were to be exported from the State.

The law provided for the inspecting, marking, or branding of the above named articles, and specified the proper type of package or container. When any of the specified articles were exported from any county, without inspection, after an inspector had been appointed, the offending person was subject to a fine up to $500.

The judges of the court of common pleas of the various counties were directed to appoint an inspector in each county at their first or any subsequent session after June 1805. These inspection laws were amended to include more articles in 1824 and again in 1831.

The above inspection law is typical of the times in that enforcement was local and involved little administrative management. Other early regulatory laws will be mentioned in connection with the development of administrative bureaus of the Department of Agriculture; but first, let us outline the administrative structure of this Department since its creation.

The State Board of Agriculture

Changes in administrative organization.- The present Department of Agriculture with its various powers, duties, and administrative divisions represents the development of a State agency through a period of ninety-two years. Due to the fact that the type of administrative management has been changed a number of times it is desirable to mention the different plans of organization which have operated in various periods.

A State Board of Agriculture was created by legislation February 28, 1846. O.L. 44, p. 70. This was a very large board, the fifty-three original members being each appointed by the Act. One-half the members were to be replaced annually by election by the delegates from the various county agricultural societies assembled in annual meeting with the State Board in Columbus. One purpose of this meeting was deliberation as to the wants, prospect, and condition of the agricultural interests throughout the State. The scope of activity contemplated can be inferred from the fact that the annual report to the general assembly was to contain the proceedings of the board, an abstract of the proceedings of the various agricultural societies, and a statement of the general condition of the agriculture of the State with recommendations for improvement. Some kind of annual report has been issued ever since. From the first considerable effort was made to assemble statistics on agriculture from each county for it was believed that the lack of information on production was proving expensive to the farmers.

Such a large board proved unweildy, so by the Act of February 8, 1847 (O.L. 45, p. 49) the number of members was reduced to ten and $200 appropriated for its use. Also on the same day the Legislature provided that one-half the revenues derived from show licenses and all money from escheated estates should go into a fund for the improvement of agriculture. Legislation in 1848 provided for payment of expenses of members at not to exceed three annual meetings. Later, in 1856, the fund was diminished, for the Legislature provided that the first $600 derived from sale of escheated estates in a county should be used to support the agricultural society. The need for more revenues was recognized in 1864 when an annual appropriation of $3300 was given the Board.

The mode of selection of the Board remained unchanged until re-organized under the Act of May 1, 1908 (O.L. 99, p. 592a) which specified a board of ten members to serve for five years without pay except necessary expenses. Appointment was by the Governor with the advice and consent of the Senate. The Governor had right to remove a member or members at any time. However, it was provided that the duly authorized delegates of the various county agricultural societies at an annual meeting in Columbus were to recommend two persons each year for appointment to the Board. All members of the Board were to have practical knowledge and experience in farming.

The next change in method of management was under the Act of April 15, 1913. O.L. 103, p. 304. A commission of four members was appointed, three by the Governor with the advice and consent of the Senate and one by the Trustees of Ohio State University. The term of office was six years at an annual salary of $5000. Not more than two of the members could be of the same political party. The Commission could select a secretary, bureau heads, experts, and other employees. The member selected by the University Trustees was to have general charge, under their control, of the College of Agriculture. The Agricultural Commission had control of the Agricultural Experiment Station, appointing the Director and fixing the terms of office and salaries of all employees and having the right of dismissal.

By 1913 State activities related to agriculture had expanded to a point which was presumed to justify the expense of a full-time administrative body. The commission plan of organization was intended to coordinate the activities of the Department, the various commissions and boards, the College, and Experiment Station. But the commission form of administration was short-lived, being terminated in 1915.

By the Act of April 21, 1915 (O.L. 105-106, p. 143) a State Board of Agriculture was re-created on about the same terms specified in the law of 1908: ten members appointed by the Governor with the advice and consent of the Senate, the term of office to be five years, and no compensation except expenses. However, this new Board was to be bi-partisan and the Act did not give the Governor power of removal at his pleasure. Another feature of the Act of 1915 was the provision that the Board elect a secretary who would be the chief executive officer of the Board. At least six of the ten board members were to be practical farmers.

The Agricultural Experiment Station was placed under a separate Board of Control by the Act of April 6, 1915. This Board was to consist of five members, practical farmers, one to be appointed each year and not more than three to belong to the same political party. O.L. 105-106, p. 122.

The Agricultural Advisory Board.- The Act of 1915 reorganizing the administration of the Department of Agriculture made no provision for coordination of activities in the Department, the College of Agriculture and the Experiment Station. This gap was bridged in the Act of March 21, 1917 which provided that the Secretary of Agriculture, the Dean of the College of Agriculture, and the Director of the Experiment Station would constitute an Agricultural Advisory Board. The law specified monthly meetings with the duty of coordinating the work of the three institutions to avoid unnecessary duplications and to secure harmony and unity in all lines of work. O.L. 107, p. 479-480.

In 1921 Ohio adopted a new administrative code which reorganized the various State departments and vested the Governor with greater executive power and responsibility. O.L. 109, p. 105. The following changes were made in respect to agriculture. The office of Director of Agriculture was created to be filled by appointment by the Governor with the advice and consent of the Senate. Chiefs of the various divisions were to be appointed by the Director. The power of the State Board of Agriculture was restricted to a purely advisory capacity over Department of Agriculture, the Board of Control of the Experiment Station, and the Department of Public Welfare in respect to the management of institutional farms. This agricultural Advisory Board consists of ten members, practical farmers, appointed by the Governor, serving for five years without pay except expenses. G.C. 1173. Individual board members have charge of the various departments of the State Fair.

The 1921 reorganization placed the Agricultural Experiment Station under a Board of Control consisting of the Trustees of Ohio State University and the State Director of Agriculture. G.C. 1171.

The latter also is a member of the Board of Vocational Education.

The Present Department of Agriculture

As mentioned above, the administrative code of 1921 created the Department of Agriculture headed by a Director appointed by the Governor. At present the Department is divided into the following administrative divisions:

(1) Plant Industry, (2) Foods and Dairies, (3) Bureau of Markets, (4) Animal Industry, (5) Feeds and Fertilizers, (6) Conservation, (7) State Fair.

A large share of the work of the Department deals with standardization and regulation intended to protect and promote the interests of the general public as well as those of farmers. The diversity of interests served can be inferred from the following summarization of the duties of the various divisions:

The Division of Plant Industry, under the plant pest law, annually inspects all nurseries in Ohio, combats the spread of plant diseases and insect pests such as the corn borer and wheat insects, administers the pure seed law, and also the inspection of apiaries.

The Division of Foods and Dairies supervises the purity and healthfulness of all drinks and food products, the honesty of weights and measures, regulates cold storages, canning factories, soft drink works, bakeries, and dairies and also regulates the narcotic traffic within the State.

The Bureau of Markets has to do principally with the standardization of market grades of fruits and vegetables. The Bureau also conducts a market news service.

The Division of Animal Industry is headed by the State Veterinarian. The principal activity is the control of infectious and contagious animal diseases. As an aid in this work the farm known as the State Serum Institute at Reynoldsburg is maintained under the administration of the Agricultural Experiment Station but subject to certain uses by the State Department of Agriculture.

The Division of Feeds and Fertilizers has the enforcement of the laws dealing with the sale of feeds, fertilizers, lime, fungicides, and insecticides in order that standards of purity and analysis are maintained.

The Division of Conservation has control of hunting and fishing, propagates game and fish and manages certain State parks and lakes. Thirteen fish hatcheries and four game farms are operated.

The Division of State Fair conducts the State fair and has some authority over the county and independent fairs.

Some description follows of how and when some of the regulations dealing with agriculture developed in order to depict the process of formation of what is now the functions of the Department of Agriculture. This description helps throw into relief the development of the reasons why certain types of regulation and control are statutory law.

The Division of Plant Industry

The control of some serious plant diseases became a matter of public concern in the early 1890's. The Legislature passed an Act to control black knot on cherry and plum trees March 2, 1892. O.L. 89, p. 56. The next year, April 13 , 1893 the act was amended to include peach yellows and the township road superintendents were given the duty of searching out diseased trees and destroying or causing the owners to destroy them. O.L. 90, p. 176. This method of control was abandoned two years later when the Legislature authorized township trustees, when petitioned by ten free holders, to appoint a township board of three fruit commissioners, with the duty of searching out and destroying diseased fruit trees. O.L. 91, p. 108. Then on April 18, 1896 the above Act was amended to include San Jose scale, and the Experiment Station

was instructed to publish a bulletin on plant disease and insect pests and the township fruit commission and clerk had the duty of distributing this information to all fruit growers in the township.

Apparently the above efforts at control were not effective for on April 14, 1900, the Legislature authorized the creation of a Division of Nursery and Orchard Inspection to be appointed by the Board of Control of the Agricultural Experiment Station. O.L. 94, p. 221. The new Act related to the control of all plant diseases and insect pests with particular reference to those mentioned above.

The purpose of the new law was to inaugurate an inspection of all nurseries and to control the shipment of plants into and within the State through a system of licensing. Additional control was provided in the inspection of orchards where disease might exist and the enforcement of remedial measures. O.L. 94, p. 220.

Two years later, May 10, 1902, the administration of the above law was transferred to the State Board of Agriculture with the authority to appoint an inspector and assistants to make the annual examination of all nurseries. O.L. 95, p. 491. The new Act was more comprehensive than the one it succeeded. Particularly in case of dispute it provided for judicial proceedings in the probate court and jury trial if necessary to decide whether trees and pla nts should be destroyed.

The Act of April 20, 1904 created a Division of Nursery and Orchard Inspection under the State Board of Agriculture. The type of control was unchanged, but the Act specified that a competent entomologist must be appointed as chief inspector. O.L. 97, p. 172. The law was revised in 1911 with no changes in policy or administration. O.L. 102, p. 451. The name was changed to the Division of Plant Industry in 1921.

Apiary inspection.- On April 15, 1904, the Legislature provided for county inspectors of apiaries. O.L. 97, p. 127. The administration was purely local. Upon petition of three bee keepers the county commissioners could appoint an inspector to serve for two years. The purpose of disease control and the authority of the inspector to enter premises and destroy diseased bees, etc. as stated in the original law has been subsequently changed but little. In 1906 the Legislature provided for an annual tax of one cent on each colony of bees in a county to pay the apiary inspector. O.L. 98, p. 55.

The Act of May 10, 1910 authorized the State Board of Agriculture to establish a division of apiary inspection (now under the Division of Plant Industry) and to appoint a competent entomologist as chief inspector. O.L. 101, p. 332. This Act was very similar in its provisions to the present law which, however, contains amendments made in 1913, 1915, 1917, and 1923.

The purpose is to control, eradicate, or prevent the introduction, spread, or dissemination of all bee diseases. As a control measure the Department of Agriculture is empowered to destroy infected bees, hives, honey, and appliances without remuneration to the owner for such are deemed to be a public nuisance.

As another measure of control the Director of Agriculture can maintain a quarantine prohibiting the shipment into the State or any of its subdivisions of bees or used equipment.

In order to localize control, the law provides that county commissioners can appropriate funds for apiary inspection in the county and appoint a deputy apiarist with the consent and concurrence of the Director of Agriculture. The salary and expense accounts of a deputy apiarist are paid by county commissioners but such accounts must be submitted to the Director of Agriculture for his approval before payment.

Any person affected by an order of the Director of Agriculture or State Apiarist has the right to appear to the Director for a public hearing; but after the hearing the decision of the Director is final.

All persons rearing queen bees for sale must, before April 1 of each year, request an apiary inspection. In case the apiary is free from disease or is made disease-free, a certificate is issued, a copy of which must be attached to every package or shipment of queen bees.

An apiary inspector can enter any premises, except a dwelling, to carry out the provisions of the law. The penalty for violation of the apiary law, or the relevant rules and regulations issued by the Director of Agriculture is a fine not to exceed $500.

The Agricultural Seed Law.- By the Act of April 18, 1913 (O.L. 103, p. 824) Ohio inaugurated the regulation of the sale of agricultural seeds to prevent adulteration and to provide a standard of purity. The enforcement of the law was given to the State Board of Agriculture which was authorized to inspect seeds offered for sale. A five dollar annual license fee (less for small quantity sales) is charged seed concerns for this service. Producers are not subject to license when unadvertised seed is sold directly from the premises. The seed laws were amended in 1935 particularly to cover the developments relative to certified seed. Rules and regulations relative to such seed are established by a committee consisting of the Director of Agriculture, the Dean of the College of Agriculture, and the Director of the Agricultural Experiment Station. O.L. 116, p. 366. The seed law (G.C. Sec. 5805-1 to 5805-16) was amended again in 1937. Senate Bill 265. Enforcement is by the Division of Plant Industry.

Seed, Soil, and Plant Inoculants.- The development of commercial cultures the past few years has resulted in regulatory legislation intended to protect purchasers against misrepresentation. The more important provisions of the Act passed March 17, 1937 (House Bill 164) are as follows: A separate annual license, costing $25, is issued by the Director of Agriculture for each separate brand of product offered for sale by a manufacturer. The usual inspection by the Department of Agriculture is authorized. The Ohio Agricultural Experiment Station has the duty of testing samples, the expense being paid out of the license fees.

The Division of Foods and Dairies

Ohio's first comprehensive pure food law was enacted in 1884. O.L. 81, p. 67. The intention of this law was to prevent the adulteration or misrepresentation of any food or drug manufactured or offered for sale, and incidentally to guard the public health as well as to prevent fraud. Provision was made for taking samples by any one to test a product, but no enforcement machinery was designated. A fine of $25 to $100 and thirty days imprisonment was provided to discourage violations.

In the following year a bill was passed to prevent fraud in canned fruits and vegetables by requiring that containers be labeled to show grade, quality, etc. Local boards of health were the enforcing agencies. O.L. 82, p. 163. The next development was the creation of a State agency to administer the law.

The office of Ohio Dairy and Food Commissioner was created by the Act of May 8, 1886. O.L. 83, p. 120. Appointment was by the Governor with the advice and consent of the Senate; salary $1500 and expenses; salary of not more than two assistants $1000. The Act applied to the inspection and analysis of any article of food and drink and gave the power of entering premises and taking samples as does the present law. The Commissioner was to be housed by the State Board of Agriculture with a restricted amount of supervision by its Secretary. The original law provided for the employment of one chemist; this was changed to three in 1887 and the authority of the Commission was expanded to include drugs and medicines. O.L. 84, p. 205. The above sketches the early development of what became the Division of Foods and Dairies under the Agricultural Commission in 1913.

Standards for foods and drugs.- G.C. 1177-12 to 1177-15. The present laws of Ohio relating to foods and drugs are for the most part in conformity with the National laws on the subject as enacted in 1905 and amended in 1913. The authority of the State Department of Agriculture in respect to regulating the sale of foods and drugs was created by the Act of 1886 and amended at various times, particularly in 1913, 1915, and 1917. In addition to the above general laws, special regulations are in force on specific foods such as milk and bread.

The Director of Agriculture has the administrative authority under the law to establish standards of quality, purity, and strength of foods, when such standards are not otherwise established by law, conforming to the standards adopted by the United States Department of Agriculture. The Director of Agriculture, also, can establish uniform rules and regulations as may be necessary for the enforcement of the food, drug, dairy, and sanitary laws of the State.

The Director of Agriculture must inspect drugs, butter, cheese, lard, syrup, and other articles of food and drink made or offered for sale in the State and prosecute in cases of fraud, unlawful labeling, adulteration or impurities in foods, drink, or drugs.

In the performance of the above duties any premises can be entered and any package opened for purposes of examination and analysis of the contents.

All fines, fees, and costs collected under prosecutions begun or caused to be begun by the Director of Agriculture shall be paid into the State treasury to the credit of the general revenue fund.

Local Supervision.- The foregoing description relates primarily to State supervision. The picture is not complete without mention of the provisions for local regulation, the history of which pre-dates State supervision.

Dairy and Food Inspection.- As early as 1831 a law was enacted specifying that any butcher or other person selling unwholesome meats or other provisions was subject to a fine of not to exceed $50. O.L. 29, p. 152, Sec. 45. Other laws relating to the purity or wholesomeness of foods were enacted from time to time, but being in fragmentary form with no special agency for enforcement their effectiveness was no doubt limited until people became more public health conscious and local boards of health began to function about 1870.. Since then municipal regulation of food supplies, particularly milk, has become the accepted policy in cities of any size. Dating back to 1869 municipal boards of health have had the authority under State law (the municipal code of 1869) to regulate the conditions under which food products, particularly milk and meat are produced or processed when the articles are offered for sale within the municipality. O.L. 66, p. 228. As relating to dairy barn inspection the law of 1874 (O.L. V. 71, p. 160) gave specific direction for municipal supervision, whereas the Act of 1869 aimed principally at the inspection of business places and food products offered for sale.

Under the present law, municipal boards of health have the following powers and duties relative to food products offered for sale within a municipal corporation.

Inspectors.- A board may appoint inspectors of dairies, slaughter houses, shops, wagons, appliances, food and water supplies of animals, milk, meat, butter, cheese, etc., and in performing such duties, can enter any house, vehicle, or yard. G.C. 4458.

Can issue permits. A board may, after inspection, require a vendor to obtain a permit, renewed semi-annually, and may require a certificate from a licensed veterinarian that cows furnishing milk are free from tuberculosis or other dangerous disease.

Duty of dairyman or vendor of milk in case of disease.- In case scarlet fever, typhoid, or other dangerous contagious disease occur in the family of a dairyman or among his employees or in a house where milk is kept for sale, the dairyman or vendor shall immediately notify the health officer of the municipality where the milk is sold. The officer can order the sale of milk stopped and shall immediately investigate and the board of health shall make and enforce such orders as it deems necessary. G.C. 4460.

Inspection of dairies.- All dairies, including the cows, stables, milk houses and milk vessels, the owners of which offer for sale within the limits of the corporation, any milk or butter are subject to inspection. The same rule applies to milk plants and creameries. G.C. 4461.

Public Health Laws Relative to Milk.- In addition to the above inspection regulations, considerable legislation exists relative to the purity and chemical content of milk and milk products. These laws at present are contained in the general code sections 12716 to 12756, inclusive; a very brief synopsis follows:

The legal minimum content of whole milk is 12 per cent solids of which three per cent must be fat. Any less content is deemed evidence of adulteration. Cream must contain at least 18 per cent fat and whipping cream 30 per cent. No substitute article can be sold or served under the name, cream. Nor can milk be lawfully sold if it has water or other foreign substance added, or if it comes from cows fed wet distillery or starch waste, or from cows delcared unsanitary or diseased by a health officer. Also, it is illegal to sell as pure milk, any milk with part of the cream removed; except, milk can be standardized to 3.5 per cent fat and 12 per cent total solids. Skimmed milk when sold must be so labeled.

Prices paid to milk producers by dealers or manufacturers must be based on the standard of 3.5 per cent butterfat and more or less can be paid for milk with a higher or lower fat content. The Babcock test is accepted as standard for measuring the fat content of milk and it is illegal to sell testing equipment which is not correctly marked or graded or to make a false determination by the Babcock test.

Condensed milk can be legally manufactured only from milk containing at least the minimum of 12 per cent solids, one-fourth of which must be fat.

Delivery to a cheese or butter factory of milk which has been adulterated or diluted or attempting to defraud by means of false weights or measures, is illegal. Likewise it is illegal to sell impure, unclean, or unwholesome milk, or milk falsely branded or labeled, or to keep a cow for milk production in unhealthy quarters. Milk bottles and other vessels must be thoroughly cleansed or sterilized before refilling.

Violation of any of the above legal rules carries penalties which vary somewhat with the offense but which usually range from $50 minimum up to $500 maximum fine with the additional penalty of imprisonment up to three months for the more serious infractions against the public health.

Ice cream manufacturers are licensed by the State Department of Agriculture in order to have close supervision over sanitation, healthfulness, and food content of the materials used. Regular manufacturers must either pasteurize the milk products or verify the fact that the milk used is from disease-free cows and that it contains a bacteria count of less than 100,000 per cubic centimeter.

In order to avoid deception public eating places serving butter or cheese substitutes must display a sign to that effect. The same rule applies to whoever deals in or sells such products.

Cheese containing 21 to less than 30 per cent butterfat must be marked "Ohio Standard Cheese"; and when containing less than 21 per cent butterfat, the words "Skimmed Cheese" must be marked on the cheese or package. When made from milk containing all the original cream the cheese can be branded "full milk cheese" or "Ohio State full cream cheese".

Weights and Measures.- Standard weights and measures are so commonplace as to be taken for granted in nearly all transactions. This convenient custom is dependent on the fact that State and national legislation has established uniform standards. We will not attempt to trace all legislation which relates to measurements; the following being sufficient to portray the background of our existing laws.

An Act to regulate measures was passed by the Ohio Legislature in 1811. At that time the commissioners of each county were directed to have made a one-half bushel measure containing 1075.2 "solid inches" which was to be the standard in the county. The county commissioners were to appoint a person to keep the measure. This person was authorized to seal measures submitted to him for comparison with the standard measure. This sealer was entitled to a fee of 25 cents for each half bushel sealed by him. Enforcement of this law was left to the justices of the peace and the $5.00 fine imposed for violations was to be paid into the township treasury.

The Act of March 5, 1835 superseded that of January 22, 1811. The terms of the Act of 1835 were complete enough to establish uniformity in weights and measures for practically all ordinary articles and purposes. Most of these are the same used at present. The standard measurements adopted were those used in the State of New York July 4, 1776 and were based on determinations made at Columbia College. The Act declared the county auditor to be the ex-officio county sealer and the secretary of State the ex-officio State Sealer. Some municipal corporations also had town sealers. County Sealers were empowered to appoint a deputy sealer, a power still exercised. The principal medium for enforcement was the provision that a person defrauded by illegal measurements was entitled to treble damages. O.L. V. 33, p. 24.

On June 14, 1836 Congress, by resolution, directed the Secretary of the Treasury to furnish the governor of each state with a complete set of standard weights and me asures, "to the end that a uniform standard of weights and measures may be established throughout the United States". United States Statutes at Large, V. 5, p. 133. The above resolution of Congress still remains on the books and serves to encourage uniformity in the laws passed by the various states relative to weights and measures. The Ohio Legislature in 1846 provided for a uniform standard of weights and measures conforming to the Congressional resolution of 1836. The law was amended in 1848, 1861, 1872, and again in 1875 to clarify and extend the application of the original Act and also to conform to federal legislation passed in 1866. In this latter year Congress made legal but not compulsory the use of the metric system of weights and measures in the United States. United States Statutes, V. 14, pp. 339 and 369.

It would be superfluous to trace all legislation relative to weights and measures for our present standards were fairly well established by the Acts already enumerated. Some changes, however, have been made in the method of administration and enforcement.

The first step toward centralization of administration was the provision in the law of 1835 making the Secretary of State the ex-officio State Sealer. This was changed in 1891 when this ex-officio duty was given to the Professor of Physics at Ohio State University. O.L. V. 88, p. 123. In 1910 the State Dairy and Food Commissioner was made State Sealer and given the general responsibility of enforcing the law. Violations carried the penalty of $100 minimum to $500 maximum fine. When the State Department of Agriculture was reorganized in 1913 the Agricultural Commission was made State Sealer. Ever since then the head of this department has been responsible for the administration of the laws relative to weights and measures, overseeing the local administration by the county auditor.

Summary of the Present Law: The State Sealer.- The Director of Agriculture, as State Sealer, can make and promulgate regulations as necessary to promptly and effectively enforce the laws relative to weights and measures. The State Sealer is custodian of the official standard weights and measures adopted by the State. All copies of the standards used by county, city, and village sealers must be submitted to the State Sealer every three years for verification. Weights and measures can be inspected by the Director or by pe rsons appointed by him. Fraudulent equipment can be condemned and confiscated. True copies of the standards are supplied each county by the State; these are also furnished at cost to cities and villages, when requested. G.C. 7965 to 7968.

County Sealer.- The county auditor by virtue of his office as county sealer, must preserve the standards delivered to him, must enforce all State laws relating to weights and measures and assist in prosecuting violators. Penalties range up to $500 fine and 90 days imprisonment. G.C. 2615.

No weighing or measuring device is legal unless it has been sealed by the Director of Agriculture or an employee under him or by the county sealer or deputy sealer. G.C. 2616.

Any person using weights and measures which do not conform to the standard of the State is liable, through civil action, for double damages to be paid to the person injured. G.C. 2620.

Each county sealer must appoint a deputy to inspect weights and measures whenever used in the county. The salary paid the deputy is fixed by the county commissioners. He must assist in the prosecution of all cases of violation. G.C. 2622.

Certain fees ranging from twenty-five cents down are collected for the service of sealing weights and measures. G.C. 2623.

City and village sealers.- The mayor can appoint a sealer of weights and measures to make inspections within the municipality. G.C. 4318 to 4322.

The Bureau of Markets

From its inception the Board of Agriculture assembled some statistics on weather, livestock, and acreage and production of crops. In fact Ohio was one of the first states to assemble such information which was in demand both by producers and distributors of farm products.

In 1882 the Legislature created a meteorological bureau to assemble current information on the weather from different districts of the State. O.L. 79, p. 143. The Professor of Physics at Ohio State University was in direct charge although partial supervision was by the Secretary of the State Board of Agriculture. Then in 1892 the activity was expanded into a crop and stock reporting service, under the Board of Agriculture, and so continued until 1917 when taken over by the Bureau of Markets created by the Act of March 20, of that year. O.L. 107, p. 429.

The powers and duties conferred on this bureau by the law of 1917 were extensive, covering research, promotion and regulation in respect to the marketing of food products. The duties included:

(1) Investigating the cost of production and marketing;
(2) Gathering and disseminating information on supply and demand, prices, market movement, and cold storage and maintaining a market news service on such information;
(3) Promoting, assisting and encouraging the organization and operation of cooperatives and other organizations among producers, distributors, and consumers.

The powers included:

(1) Making rules and regulations for grading, packing, handling, storage, and sale of all food products and enforcement of such;
(2) Investigating the practices and methods of commission merchants, etc.;
(3) Arbitrating controversies between producers and distributors when requested;
(4) Protecting consumer interests against excessive prices;
(5) Advising producers and distributors in efficient distribution of food products at fair prices;
(6) Encouraging the establishment of retail municipal markets and direct dealing between producers and consumers;
(7) Encouraging the consumption of Ohio grown products and to inspect and grade farm produce;
(8) Regulating the movement and storage of food stuffs in case of emergency or shortage.

The Director of Agriculture can fix fees for inspection and like service to make such work as nearly self-sustaining as possible.

The Division of Animal Industry

On April 29, 1885, the Legislature passed an Act which was intended "to suppress and prevent dissemination of epizootic and communicable diseases of domestic animals in the State of Ohio". O.L. 82, p. 176. To administer the Act, the Governor was to appoint with confirmation by the Senate a board of three Livestock Commissioners to serve for three years. This Board was directed to use all proper means to combat the spread of disease; but the principal device specifically named was the power to quarantine premises and farms where disease existed. Also the Board could make regulations as they deemed necessary. It was made the duty of owners to report disease and properly dispose of the dead bodies of diseased animals under threat of a penalty. The Board was intended to function on a part-time basis, only $1000 being appropriated to pay $4.00 per day to the Commissioners when on duty. An annual report to the Governor was specified.

Texas fever: Act May 14, 1888 (O.L. 85, p. 83). The Act prohibited the driving of cattle into the State from specified southern states, infested with Texas fever, during the months of March to October, inclusive. Cattle could be transported from the infested states by railroad and unloaded in Ohio for feeding only. The penalty for violations was $100 to $1000 fine. Nothing in the Act indicated that the disease was known to be associated with the cattle tick although it was spoken of as a germ disease.

Another legislative Act in 1888 was intended to control foot-rot and scab in sheep. It was declared unlawful to permit infected sheep to run on a public highway or on uninclosed land or to sell such sheep without disclosing their condition to the purchaser under penalty of one hundred dollars fine in addition to the actual damages suffered by the purchaser. O.L. 85, p. 336. G.C. Sec. 13365. This law is still in force as is also a still older law intended to prevent the sale to uninformed purchaser of any diseased domestic animal. G.C. Sec. 13364.

By legislative Act on May 7, 1902 the State Board of Agriculture became also the Board of Livestock Commissioners. O.L. 95, p. 412. The new law contained several additional features:

(1) The Governor on the advice of the Commissioners could by proclamation prohibit the importation of animals from areas where disease had become epidemic.
(2) In order to prevent the spread of disease, the Commission was empowered to destroy infected animals after they were appraised.
(3) The Commission was to employ a competent veterinarian.
(4) Authority was given to the Commission to inspect any premises as a protection to livestock.
(5) The Commission was empowered to adopt the rules and regulations of the Federal Board of Livestock Commissioners.
(6) The inspector of the Federal Bureau of Animal Industry was given the right to inspect, quarantine, and condemn animals.
(7) The method of compensating owners of condemned animals was specifically provided.

Regulation of importation of cattle.- G.C. 1177-55 to 1177-59. In order to control tuberculosis and other infectious diseases of a malignant nature additional restrictions have been placed on the importation of cattle into the State, the history of which is mentioned above. The present restrictions are imposed under the law enacted in 1913 and amended in 1917. O.L. 103, p. 183; 107, p. 175.

Three different plans are authorized in order to make the examination as convenient as possible to the owner. Under the first plan, animals six months old or older intended for breeding or dairy purposes must, when imported into Ohio, be accompanied by a certificate from a qualified veterinarian, certifying that the cattle have been tuberculin tested within six weeks previous to importation and found free from all infectious diseases. When calves under six months of age are imported the certificate need only show that they are from disease-free cows. When not accompanied by a health certificate, animals may be held at stockyards near the State line and there tested by a veterinarian at the owner's expense. Or, cattle can be imported under quarantine, subject to the rules of the Department of Agriculture and held in quarantine at their destination until examined at the expense of the owner and released by the Department. Violations of the above law carry the liability of a $50 to $200 fine.

Eradication of tuberculosis among cattle.- G.C. 1121-1 to 1121-25. The present State policy relative to tubercular cattle was further established by legislative Act effective July 15, 1925. O.L. 111, p. 202. Through use of the police power to reenforce the voluntary action of cattle owners, and indemnity payments by the State and Federal governments to the owners of condemned cattle, the prevalence of this disease has diminished to a point where counties are classified as modified tuberculosis-free accredited areas by the Department of Agriculture and the U. B. Bureau of Animal Industry. As defined by the Act of April 17, 1931, an area is so accredited when as a result of testing or retesting the number of reactors is less than one-half of one per cent of the cattle within the area. O.L. 114, p. 81.

The tuberculin testing is administered by the Department of Agriculture largely at State and Federal expense although the law provides that county commissioners can make appropriations to aid the work and this policy has been used in various counties.

Due to the fact that the test could work a great financial loss on individual cattle owners the law of 1925 specifies that condemned cattle shall be appraised and the owner paid, out of State and Federal funds, two-thirds the difference between the appraised value and the gross salvage value of slaughtered cattle.

The procedure of testing can be initiated by the owner of a herd petitioning the Department of Agriculture for an examination. Or, when the Department has reason to believe that a herd is tubercular, it can quarantine, test, and destroy diseased animals, provided State money is available to indemnify the owner. The more usual procedure used to inaugurate testing is by petition. When a majority of the resident cattle owners representing

seventy-five per cent of the cattle owned in a township or county petition the Department of Agriculture the testing may be done provided funds are available to conduct the work. After seventy-five per cent of the cattle have been tested the remainder can be placed under quarantine after thirty days notice. Severe penalties are provided for removing an animal from a quarantined herd without special permission from the Department of Agriculture. The owners of such herds can petition for a test and the removal of the quarantine. After 90 per cent of the cattle have been quarantined or tested the Department has the authority to enter the premises and test the remainder and anyone interfering or obstructing the work is liable to a fine and imprisonment.

When a county or township is enrolled in an area plan for testing or when 75 per cent of the cattle have been tested, no cattle shall be brought into the area except under plans approved by the Department of Agriculture.

During the past few years a campaign has been carried on to eradicate contagious abortion in cattle (Bangs disease). This work has been supervised by the Federal Bureau of Animal Industry and federal funds alone have been made available to compensate owners for infected animals.

State board of veterinary examiners.- This Board was created under the Act of May 21, 1894. O.L. 91, p. 392. The Secretary of the State Board of Agriculture and the Secretary of the State Board of Health were ex-officio members and three other members (veterinarians) were appointed by the Governor. Under the present law as amended in 1925, the board consists of three members appointed by the Governor to serve for six years and the State Veterinarian is the ex-officio secretary.

The duties of the Board are the examination and licensing of persons to practice veterinary medicine, surgery, and dentistry. The Board can recognize and exchange licenses similarly granted by other states and countries. Licenses may be revoked on grounds of incompetence, professional dishonesty, and for violations of rules and regulations of the Department of Agriculture relative to infections and contagious diseases. G.C. 1177-16 to 1177-16H.

Licensing of Livestock Dealers and Local Marketing Agencies.- Principally to prevent the spread of infectious and contagious diseases of livestock, a legislative Act of May 15, 1935 provided for the licensing of livestock dealers and marketing agencies by the Department of Agriculture. O.L. 116, p. 437. G. C. 1177-71 to 1177-83 inclusive. The licensing provision applies to all livestock dealers and brokers but does not apply to farmers selling livestock reared or fed on the farm, or to farm auction sales, or to butchers, packers, and processors, and terminal markets. This law never has been rigorously enforced, although the amendment in 1937 may tend to make enforcement more universal.

Licenses are issued without charge upon application accompanied by sufficient information to satisfy the Department that the applicant is of good character and will act in good faith in the conduct of the business.

More specifically a license may be refused on the grounds that the applicant has (1) violated regulations governing the inter-state or intra-state movement of livestock; (2) made misleading statements or practiced any fraud relative to the health, condition, weight, etc. of livestock; (3) has had a continuous course of dealings of such a nature as to demonstrate an inability or unwillingness to conduct a dealer or broker business in a satisfactory manner; (5) fails to practice the sanitation rules prescribed by the Department for premises and vehicles; (6) fails to keep records required by the Department or to produce such upon request.

A copy of a dealer's license must be conspicuously posted at his place of business. The yards and premises where a dealer keeps livestock must be inspected and disinfected by a veterinarian approved by the Department at the expense of the licensee. Also all animals, not for immediate slaughter, sold by a dealer must be inspected and treated when necessary by an approved veterinarian before leaving the premises of the dealer in order to prevent the spread of disease.

The Department and its agents have the right to inspect the dealer's records at any time to determine the origin and destination of livestock. Penalties for first violations range from a fine of $25 up to $100 or ten to thirty days imprisonment if the fine is not paid; subsequent violations, $100 to $500 fine and three to six months imprisonment. The fines are to be paid into the State treasury. Justices of the peace, mayors, police, and the common pleas courts have jurisdiction.

The above Act was amended in 1937 to require marketing agencies and dealers be bonded to insure all obligations involved in the purchase and sale of livestock. Also, the 1937 amendment emphasizes accurate weights and provides for inspection of scales not under the Federal Packers and Stockyard Act of 1921. Where ten cars or more of livestock are handled annually, weighmasters must be bonded for $1000 and approved by the State Department of Agriculture.

The Division of Foods and Fertilizers

Fertilizers.- The first effort to supervise the sale of commercial fertilizers in Ohio was incorporated in the Act of April 4, 1878. O.L. 75, p. 91. The Act was very general in its requirements, merely stating that a fair printed analysis must be attached to each package offered for sale at more than $10 per ton. This analysis was to be obtained from the Professor of Chemistry at the Ohio Agricultural and Mechanical College. No administrative machinery was provided for enforcement although a fine of $25 to $200 and not to exceed 30 days in the county jail was the specified penalty for violations.

The above law was superseded by a more comprehensive Act passed March 16, 1881, which provided that the Secretary of the State Board of Agriculture administer the control which required a person, offering fertilizer for sale, to deposit a sample for analysis by the Secretary and apply for an annual license costing $20. The Secretary or his deputies could take samples for analysis wherever fertilizer was found for sale. Fraudulent

practices could be punished by a fine of $200 to $500. An annual report was to be published by the Secretary of all analyses made and licenses issued. O.L. 78, p. 55.

The above law was amended slightly in 1893 to require more specific information relative to the chemical analysis displayed on the package. O.L. 90, p. 325. The same was true of the next amendment made in 1908. O.L. 99, p. 343. This amendment introduced two new features: (1) a fertilizer offered for sale must contain at least 12 per cent of the principal fertilizing elements. (2) provision was made for the analysis of samples taken by a purchaser.

The present law.- Technical changes have been made at various times since 1908, the last being in 1929. O.L. 113, p. 287. G.C. 1150 to 1155.

The purpose of regulation is to assure the purchaser that the product is true to representation and the method of control is by licenses issued to manufacturers and dealers.

A certificate, affixed to each bag of commercial fertilizer, must show the brand or trade mark, the manufacturer and the chemical analysis. No misleading statements can be used in the description. A certified copy of this certificate must be filed with the Director of Agriculture before offering the product for sale in this State. As a further restriction no commercial fertilizer can be sold in the State when the nitrogen, available phosphoric acid, and water soluble potash, taken collectively, total less than sixteen per cent.

An annual license fee of $30.00 must be paid to the Director of Agriculture for each brand of fertilizer offered for sale by a manufacturer or dealer (not by both).

Each year an analysis is made of each brand of fertilizer and the result published by the Director of Agriculture. As a further check, an analysis may be made of the different lots of fertilizers offered for sale. Also, a purchaser can have an analysis made at his own expense by the Department of Agriculture.

Agricultural lime.- G.C. 1177-43 to 1177-54. Essentially the same regulations apply to the sale of agricultural lime as to fertilizer, but there are some differences which need be mentioned. An annual license fee of $25.00 must be paid by a manufacturer or dealer (not by both) for each brand of lime offered for sale within the State; excepting persons who sell limestone at the place where it is ground only to persons who haul the product away in wagons or motor trucks. Such small producers are required only to supply a purchaser with a printed tag showing the analysis which also must be filed with the Director of Agriculture.

Feeds.- Supervision of the sale of commercially mixed stock feeds was inaugurated in Ohio under the Act of April 25, 1904. O.L. 97, p. 395. Most of the requirements of the original law were not greatly different from

the present ones which are mentioned below. The original Act was amended slightly in 1908 and again in 1934, but only technical changes were made. O.L. 99, p. 81 and O.L. 115, Part 2, p. 237.

Present regulation.- G.C. 1141 to 1149-1. Commercial livestock feeds, tonics, salts, mineral feeds, etc., when offered for sale must be labeled or tagged with a printed statement showing the net weight, the brand or trade mark, name and address of the manufacturer, and the chemical analysis. The purpose of the regulation is to assure the purchaser that the product is not misrepresented. Each manufacturer "for wholesale" must obtain an annual license costing $20 from the Director of Agriculture for each brand of product offered for sale. When manufacturing "for retail" only the license fee is $5. A certified certificate showing the analysis and accompanied by a fair sample must be submitted to the Director of Agriculture who can reject the application for a license if the sample is not as certified. An analysis is made by the Department of Agriculture annually of each brand of commercial feed offered for sale and in addition agents of the Department have authority to take samples at any time from feeds offered for sale. Penalties are provided for adulteration and the Director of Agriculture can issue rules and regulations to carry out the purpose of the law. An annual report is published showing the chemist's findings in respect to the content of the various brands of feeds offered for sale.

Regulation of manufacture and sale of insecticides and fungicides.- G.C. 1177-29 to 1177-42. This regulation was inaugurated in 1913 in order to protect purchasers from misrepresentation as to the chemical analysis and other properties of insecticides and fungicides. O.L. 103, p. 161, and O.L. 107, p. 460.

Administration is by the Department of Agriculture, Division of Feeds and Fertilizers which collects an annual manufacturers license fee of $20 for each certificate filed showing the analysis of each product offered for sale. A copy of this certificate must be attached to each package of the article when sold. In the process of enforcement the Department may purchase samples in the open market and test them at any time. Employees of the Department have the right to enter any premises at any time to obtain samples. Fines ranging from $50 to $500 may be imposed for violations.

Reduction Plants.- The present system of regulation under the Division of Feeds and Fertilizers is a relatively recent development. Although the disposal of dead animals was subject to some regulation as early as 1830 when a law was enacted to prohibit throwing the carcass of a dead animal in a stream or lake. Similarly the Act of April 14, 1888, (O.L. 85, p. 268) made it unlawful to throw the carcass of a dead animal or refuse from a slaughter house in a stream, lake, privy, or on the ground where it would be a public nuisance. Another Act (O.L. 88, p. 188) in 1891 specified that the bodies of animals dying from contagious diseases must be burned or buried at least four feet deep within 24 hours after death; or they could be moved to a fertilizer establishment in a water-tight compartment. Violations: $5 to $20 fine.

Regulation of business of handling dead animals.- G.C. 1177-60 to 1177-70. This law was enacted in 1919, becoming effective January 1, 1920. O.L. 108, Part 1, p. 164. An annual license must be secured from the Department of Agriculture in order to engage in the business of disposing of dead animals, excepting small animals, fowls, etc., in a city or village.

The purpose of regulation is to maintain sanitary precautions in transporting and processing the bodies of dead animals so as to prevent the spread of animal diseases and also to prevent reduction plants becoming public health hazards.

The annual license fee is $50; provided the premises are not in a satisfactory condition and no license is issued until changes have been made, an additional fee of $25 is charged for a second inspection. Additional inspection may be made at any time and violations of the rules and regulations of the Department of Agriculture carry the penalty of $50 to $200 fine.

The Division of Conservation

This Division, as previously mentioned, is concerned with the wild life resources of the State. Development of a State policy relative to these resources has not kept pace with the forces of depletion incidental to the growth of human population, although the present activities are showing positive results.

Wild animals are the property of the State. This theory has been followed in legislation by the American states since colonial times, being derived from the common law of England and having an original source in Greek and Roman law. But it was not until 1896 that a decision of the United States Supreme Court (U.S. Reports, V. 161, p. 519) removed all doubt that this policy was substantially tenable in all circumstances for some lower court decisions supported a different point of view.

Wild life resources were at one time so plentiful in Ohio that no restrictions were placed on the taking or wanton destruction. Not many decades passed after the State was opened to settlement until the Legislature began to create some restrictions. The first law to regulate the taking of wild animals was passed January 18, 1830, to declare a closed season on muskrats from May 1 to October 15, annually. Other similar legislation was enacted from time to time but not until April 10, 1857 was a game law with general features enacted. This law made it unlawful to pursue or kill most species of song birds on the premises of another. A closed season, February 1 to September 15, was declared on most game birds, deer and rabbits. Disturbing or destroying birds' eggs was made unlawful. Penalties ranged from $2 to $15 and prosecution was by the justice of the peace courts with the fines going to the common schools. A few changes were made in the game laws in 1861. The first attempt to regulate fishing in the inland waters was by the Act of May 7, 1869 which prohibited the use of nets and traps except on one's own premises and on waters having an area of more than 1000 acres. O.L. 66, p. 348.

From this time on legislation became more frequent, indicating that people were becoming disturbed by the depletion of the fish and game resources and were trying to do something about it. In 1877 a codification of the fish and game laws consolidated various acts passed in 1871, 1873, 1874, and 1876. The next important change was the creation of a Fish and Game Commission in 1886. O.L. 83, p. 186.

This Commission was a bipartisan body of five members appointed by the Governor and confirmed by the Senate. It should be mentioned that in 1873 the Legislature had authorized the Governor to appoint a three-man commission of fisheries and in 1875 the sum of $10,000 was appropriated for the establishment of fish hatcheries. This activity was inaugurated to encourage the commercial fishing industry particularly in Lake Erie. To some extent, therefore, the Fish and Game Commission was the continuation of a previous activity. O.L. 70, p. 274 and O.L. 72, p. 141.

The several duties delegated to the Fish and Game Commission included: (1) Examining the various streams and lakes to determine how to make them more productive of fish and game; administrative authority was given to the Commission to put into effect such control measures as it deemed necessary; (2) Inquiry into the matter of artificial propagation of fish and carrying on experiments of this nature; (3) Enforcing the fish and game laws through a system of county wardens.

The administrative authority of the Fish and Game Commission was absorbed by the Agricultural Commission in 1913 (O.L. 103, p. 306) and was so continued under the Board of Agriculture from 1915 to 1921. O.L. 106-106, p. 170.

The Fish and Game Commission was redesignated as the Division of Fish and Game by the reorganization Act of 1921. Some change in management and in scope of activity was again authorized by the Act of April 5, 1929. O.L. 113, p. 551. Under the new arrangement the Governor appoints a bi-partisan Conservation Council of eight members to serve without pay. This Council recommends the Conservation Commissioner who is appointed by the Director of Agriculture. The Council has general supervision and control over several lakes, reservoirs, and State lands(1) dedicated to the use of

(1) Ohio does not have a unified system of administration over its public parks and lakes used for recreational purposes. Following is a summary of the agencies supervising State owned areas:
(1) The Division of Conservation - nine State parks, Pymatuning Reservoir and Roosevelt Game Preserve. These include 13,705 acres of land and 34,000 acres of water.
(2) The Division of Forestry - thirteen State forest parks (5928 acres) and eight State forests (55,300 acres).
(3) The Ohio State Archeological and Historical Society - forty historical areas usually small in area (1892 acres).
(4) The Department of Public Works - Lake White in Pike County (land 25 acres, water 350 acres); an unnamed area of canal lands southwest of Circleville; and Forty Acre Pond three miles north of St. Mary's.
(5) Lands leased to local units of government: Virginia Kendall Park (430 acres) administered by the Akron Metropolitan Park Board. Independence State Park (100 acres) - Defiance County Park Board.

the public for park and pleasure resort purposes, and the enforcement of all laws relating to the protection and propagation of birds, fish, and game throughout the State. All fish and game licenses and fines are used for conservation purposes under the direct supervision of the Conservation Commissioner.

The present law contemplates the development of the wild life resources of the State through the coordination of the fish and game laws with the development of game refuges, pleasure parks, resorts, and lakes, and further aided by a program of fish and game propagation. The Conservation Council has the power and duty of investigating the natural resources of the State and recommending measures to conserve and develop these resources so far as practicable. Features of the law developed in 1921 and 1929 make possible the acquisition through gift, purchase, or condemnation of lands suitable for game refuges. Revenues from hunting and fishing licenses are used for this purpose as well as for propagation and other activities of the Commission.

To summarize: Prior to 1830 no laws restricted the taking of wild animals. From 1830 to 1886 locally enforced laws were relied upon to restrict hunting and fishing. Since 1886 when centralized administration was adopted, restriction has been supplemented by efforts at propagation. Another control device, limiting the amount of game an individual might kill in one day was inaugurated in 1902. In the same year another restriction was inaugurated in the requirement that a non-resident must obtain a game license before hunting. Licensing of resident hunters (land owners, their families, and tenants excepted) was started in 1915. During the past two decades a still more positive policy has been pursued through the acquisition or control of game refuges now recognized as the best use for some lands and at least supplemental to forestry on other lands. The financial policy is to use the revenue from hunting and fishing licenses and fines to support the above activities.

Other Supervision

The Milk Marketing Commission.- A temporary innovation in the control of milk marketing was authorized by the Act of June 8, 1933 which expired July 1, 1935. O.L. 115, p. 288. The purpose of the Act was to regulate the distribution of fluid milk and cream in order to achieve the following objectives: (1) the procurement and maintenance of an adequate supply of milk with the proper chemical and physical content, free from contamination or infection. (2) To bridge the gap between producer and consumer more effectively and in so doing eliminate unfair trade practices. Producing, processing, and distributing milk was declared to be a business charged with a public interest and the control set up had elements similar to public utility control, although a distinguishing feature was the right of producers and distributors in market areas to agree on prices and terms without recourse to the commission. All distributors of milk, including producer-distributors, were licensed; wholesale and retail prices of milk were subject to whatever market agreements existed in an area, these agreements being arbitrated by the commission in case of disagreement; a license could be revoked by the commission for violation of any sanitary regulation, fair business practice, or any rule or regulation of the commission.

Further information on the general objective of the Milk Marketing Commission was stated in the law approximately as follows: "It has been the policy of this State to foster and encourage sound and effective methods of marketing agricultural food products as evidenced by the creation of the Bureau of Markets in the Department of Agriculture, and to protect the agricultural interests of this State against unfair and discriminatory practices in connection with marketing."

"As a result of this policy the normal process of marketing milk has come to be a cooperative enterprise which ought to be protected by social control. It is the intent and purpose of this act more effectually to promote the settled policy of this State as so established, so far as the marketing of milk is concerned, and to provide an effective means of social control to that end." O.L. 115, p. 290.

The administration was by a bipartisan commission of four members appointed by the Governor. The commission was a part of the Department of Agriculture to the extent that the marketing functions of the Commission was coordinated with those of the Department and the Director of Agriculture could assign any employee under him to assist the Commission when so requested by the Commission. An Executive Secretary was employed by the Commission to supervise the work, the Commissioners being part-time employees of the State at an annual salary of $1800.

It may be observed that the Milk Marketing Commission was created to correct the unsatisfactory conditions existing in the industry in 1933. Its formation came at a time when the generally unsettled economic conditions encouraged corrective legislation by both the State and National governments. Although the commission was allowed to lapse in 1935 the effects of its regulation continue to influence, to some extent, the practices and relationships between milk producing and distributing organizations.

Warehousing of Grain.- A law was enacted December 21, 1933 for the purpose of providing the owners of grain in Ohio with the means of warehousing it on the farm and elsewhere as a basis of credit. O.L. 115, Part 2, p. 167; G. C. Sections 1169-2 to 1169-46 inclusive. This law was enacted primarily to permit farmers to qualify for loans from the Federal Commodity Credit Corporation. In order to provide the necessary restrictions and safeguards, the Director of Agriculture was authorized to administer the law as follows:

Upon the application of one or more citizens of a county, the Director must appoint a local supervisory board of three members, or, the Director can appoint the board by his own initiative. When the local board has been established, the Director shall license it subject to the rules and regulations which he may provide. Members of local boards must be residents and producers of grain in the State and must take the same oath as is required of public officials. The term of office is three years, subject to removal for cause by the Director of Agriculture. The privileges of the Act are open to all owners on the same conditions and any owner can make application to the Board for a storage certificate.

Upon recommendation of the local board subject to the approval of the Director of Agriculture, local sealers can be appointed with the same powers in respect to enforcement of the Act as any peace officer. Sealers must be bonded in an amount specified by the Director. The duties of the sealer are to supervise the storage of grain, ascertain the amount, and determine the grade and quality; and he can enter premises at any time for purpose of inspection. Seals, locks, etc., shall be those approved by the Director of Agriculture.

Storage certificates are on forms prepared by the Director and contain all the relevant information necessary to establish them as credit instruments. The sealer issues the certificates and files duplicates with the local board. When a certificate is issued to a tenant, the owner of grain, it ceases to be negotiable when the tenant's lease is terminated. Warehouse certificates can be issued in negotiable form and a duplicate can be filed in the county recorder's office the same as a chattel mortgage.

All grain stored and sealed under the Act must be insured and the policies deposited with the local board. This board can act as trustee for any certificates assigned to it.

The expenses of the local board and sealer are to be met by charging not to exceed one cent per bushel on all sealed grain. The Director of Agriculture charges a fee of $10 for issuing licenses.

Severe penalties are provided for breaking into sealed grain or for any fraud associated with issuing certificates or illegally selling stored grain. Fines range up to $1000 and imprisonment up to two years for the more serious types of fraud.

LEGISLATION AFFECTING LAND USE

The fullest development along this line is related to drainage; satisfactory utilization of much of our best land for agriculture has been dependent on drainage projects so large as to require community action. This has involved legislation for a century. Next, the development of urban areas created the need for sanitary and sewer districts, water supply districts, etc., and incidentally involved the public acquisition and control over areas of rural land. The continued depletion of our forest resources impelled the development of a more positive State forestry policy. Also, cities find it desirable to develop forested areas in connection with the water supply and also for recreational purposes, and the necessary legislation has been enacted. In recent years land planning for urban uses has been extended to cover some land still in rural areas and a limited amount of zoning authority granted. Still more recently planning the uses of other rural areas has been given some public attention, although little State legislation has been enacted on the subject in Ohio, the Conservancy Act excepted.

Drainage

The laws of Ohio related to the construction and maintenance of drainage systems are extensive, being contained in a total of twelve chapters of the Code of Ohio (two chapters have been repealed). The titles, as follow, are partially explanatory of the circumstances covered by the various chapters: (1) single county ditches (2) joint county ditches (3) inter-state county ditches (4) county sewers and water supply systems (4A) sanitary districts (5) township ditches (6) underground drains (7) sinkholes and fissures (now repealed) (8) cleaning and repair of drains and water courses (9) removal of drift (1) levees (now repealed) (11) conservancy Act of Ohio.

Land Drained in Ohio

No early records are available to indicate the amount of actual construction of drainage ditches, the Census of 1920 being the first complete record available on the subject. The Census reports that of the total land area of 26,073,600 acres in the State, 8,107,204 acres were included in drainage projects in 1920 and 8,165,494 acres in 1930 or an increase of 0.7 per cent in a decade. Due to the fact that most of the land needing drainage has been so improved, little net increase is probable in the future. Some areas have been drained which are not suited for agricultural use and will not be maintained. Most drainage projects are located in western and northern Ohio, the greatest concentration being in the northwest. Drainage districts cover practically all the land area contained in a rough rectangle extending from Delaware County west to Darke, north to Williams, east to Erie and south to Delaware.

History

At least as early as the 1840's and 50's various special legislative acts were passed to authorize individual counties or townships to construct drainage ditches or water courses. Logically, it was only a matter of time until general laws were passed to meet the need for publicly managed drainage projects. On February 24, 1853 the Ohio Legislature passed such a general Act to authorize township trustees to establish watercourses and locate ditches. This Act was amended in 1854, 1857, and 1859 and was finally replaced in 1861 by another Act which shifted the main responsibility for ditch construction to the county with the provisions, however, that when a ditch was entirely within the bounds of a township, the trustees could proceed under the Act instead of the county commissioners.

The Act of 1861 provided that when the commissioners deemed the improvement conducive to the public health, convenience or welfare, they "could cause to be located, established, and constructed any ditch, drain, or watercourse within the county". O.L. V. 58, p. 49.

The procedure established by the Act of 1861 was not much different from that in effect today; the principal distinguishing feature being that this original law lacked the detail which was developed through the years to meet more and more special circumstances.

Present Drainage Laws

Legislation relative to drainage has been enacted at least every few years from the 1840's to the present time. The final important development was the Conservancy Act passed in 1914 following the disastrous flood of 1913. The present drainage laws provide for public action to meet a considerable range of conditions incidental both to rural and urban areas. These conditions can be understood from the following description of the present drainage laws.

Single County Ditches (G.C. Sec. 6442 to 6508 inclusive):--Administration is vested in the board of county commissioners who act on petition filed by any land owner or owners who presumably will be benefitted by the improvement. The construction must be justified by the necessity of such improvement in order to drain land or to prevent overflow, and furthermore the improvement must be conducive to the public welfare with a total cost not to exceed the benefits conferred. The one or more petitioners must file bond in the sum of $200 plus $50 additional for each mile of improvement which sum is payable for costs if the petition is not granted. After notice to the land owners affected remonstrances may be filed. The commissioners may or may not grant the improvement after investigation.

Location, so far as possible, shall avoid cutting across farms. Two or more improvements may be joined as one.

It is the duty of the county surveyor to survey the route, establish the grade, estimate the benefits and damages to the various lands and prepare and let the contracts for construction.

The court of common pleas hears all matters of appeal from persons claiming to suffer inequity from the assessments or from the construction. Trial by jury is optional with the complainant.

Part or all of the cost of the improvement can be defrayed by special assessments levied against the benefitted property both privately and publicly owned. The county commissioners designate the time period over which the assessments will extend.

The county commissioners, if necessary, can levy an annual tax not to exceed five-tenths of a mill on the county duplicate to defray the cost of location and construction of county ditches. The commissioners also can apportion part of the expense to a township to be met by a township tax levy not to exceed five-tenths of a mill.

The county auditor is responsible for the preparation and keeping of records of ditch improvements.

The county commissioners can abandon a ditch upon proof that it has ceased to be a public utility and that abandonment will be conducive to public welfare. But when such abandonment interferes with private property rights the damage is to be paid by assessments levied against the property benefitted by the abandonment.

Two or more land owners can agree to construct a ditch at their own expense and by filing the agreement with the county auditor to be entered on the county ditch records the ditch can be declared a public water course.

When a ditch is needed to improve a highway or other land owned by the county, part of the cost can be assessed against privately owned lands when a benefit is conferred. But in such cases the approval of the court of common pleas is required and the ditch records are kept by the clerk of courts instead of by the county auditor.

Joint County Ditches (G.C. Sec. 6509 to 6563 inclusive):--Two or more counties may join in the construction of a ditch or drain. In such case the proceedings are conducted by a joint board of county commissioners in the counties affected. The petition can be filed with one county auditor and if the joint board of commissioners cannot agree which surveyor shall act, the surveyor of the county where the petition is filed shall survey the project. The auditor and treasurer of the same county shall act as the ex-officio agent of the other counties and shall certify to the other county auditors the assessments to be made. In general the proceedings follow the same course as applies to single county ditches.

Inter-State County Ditches (G.C. Sec. 6564 to 6596 inclusive):-- One or more Ohio counties are authorized to cooperate with one or more counties in a neighboring state in the construction and maintenance of a ditch. The proceedings in essential respects follow the same procedure applying to single and joint county ditches.

County Sewers and Water Supply Systems (G.C. Sec. 6596 to 6602-33c inclusive):--Counties are authorized to construct trunk or main sewer lines when the State Board of Health finds such improvement is necessary in a county for sanitary reasons. Part or all of the sewer line can be within or without a municipal corporation. The county commissioners can acquire the necessary real and personal property by purchase or appropriation proceedings; also easements and rights of way.

Sewer Districts:--The board of county commissioners of any county may, by resolution, lay out, establish, and maintain one or more sewer districts for the purpose of promoting and preserving the public health and welfare. Such districts must be within the respective counties outside of municipal corporations or, when authorized by the council of a municipality the county sewer district may include incorporated territory.

The board of commissioners can acquire, construct, maintain, and operate a sewer system and disposal plant. Outlet sewers and disposal plant need not be within the district. A sanitary engineer can be employed; and in a county with a population in excess of 100,000 the commissioners maintain a sanitary engineering department.

The board of county commissioners can levy assessments for construction or maintenance and operation and can issue bonds for improvement expenses.

A property owner can appeal to the probate court for relief from assessments or taxes levied by the county commissioners for the purpose of sewer district improvements.

The State Department of Health can require a board of county commissioners to establish a sewer district and provide for the necessary sewage disposal when such service is necessary to preserve the public health and welfare of an area outside a municipal corporation.

Joint sewer districts can be established by counties, cities, and villages and under the terms of contract agreed upon may construct, maintain and operate a joint sewer system and disposal works.

County commissioners are entitled to remuneration in addition to their regular salary for time spent in the establishing of a sewer district or water supply system. The compensation is $5.00 per day with a total not to exceed $75.00 on any one sewer or water supply improvement. Or during any current year the maximum compensation for such service performed by a county commissioner or sanitary engineer shall not exceed the compensation received by the county auditor.

Water Supply Systems:--To preserve and promote the public health and welfare and to provide fire protection, county commissioners can acquire, construct, maintain, and operate a public water supply or waterworks system and fire fighting equipment for any established sewer district. The same general procedure relating to administration of sewer districts applies to water supply systems and need not be repeated. Since a sewer system is dependent on water supply in the same area served it is evident that the laws authorizing the services would from necessity be harmonized to cover these allied services.

The State Department of Health can require a board of county commissioners to establish a sewer district and provide for the necessary sewage disposal when such service is necessary to preserve the public health and welfare of an area outside a municipal corporation. A similar order can be made relative to a water supply system. In both instances a prerequisite to the action of the State Department of Health is a complaint, by the legislative authority or health officer of a local unit of government, concerning the water supply conditions. If investigation substantiates the complaint the action by the commissioners is ordered.

Sanitary Districts (G.C. Sec. 6602-34 to 106):-- These are established by the common pleas court of a county or courts of two or more counties acting jointly. The purposes for which a sanitary district may be established are: (a) to prevent and correct the pollution of streams; (b) to clean and improve stream channels for sanitary reasons; (c) to regulate the flow of streams for sanitary purposes; (d) to provide for the collection and disposal of sewage and other liquid wastes produced within the district; (3) to provide a water supply for domestic, municipal, and public use within the district and incidental thereto - to construct, maintain, and operate any works incidental to sewage disposal and water supply systems and to do anything incidental which is necessary to the fulfillment of the main purposes of the district.

Before a sanitary district can be established a petition must be filed with the clerk of the court, signed by five hundred freeholders, or by a majority of the freeholders of the proposed district, or by the owners of more than half of the property, in either acreage or value contained in the district or a petition may be signed by the governing body of a public corporation or by railroads and other corporations.

A sanitary district is under the administration of a director appointed for a term of five years by the court. In the event that the district area is in more than one county, each county is entitled to a director who must be a resident freeholder of the county. A secretary shall be selected by the director and also as necessary, a chief engineer, treasurer, attorney, and other agents and assistants.

The board has the dominant right of eminent domain to condemn land. Regulations may be issued covering the use or misuse and control over properties and property rights associated with the purpose for which the sanitary district was created.

In general, the legal provisions relating to the administrative matters of a sanitary district are similar to the laws covering procedure in a conservancy district.

By way of summarization, sanitary districts may have a definite influence on land use. Their application is centered primarily on sanitary conditions as related to water supply and sewage disposal in metropolitan areas. An important factor related to rural areas is the prevention or correction of stream pollution, the management of which falls within the realm of sanitary district organization.

Township Ditches (G.C. Sec. 6603-6607):--Procedure for construction follows the same plan as outlined for county ditches with the township clerk functioning instead of the county auditor.

Land owners have the option of constructing their proportionate share of township ditches but if they fail to do so the township trustees shall proceed with the work and assess the cost against the land and collection shall be made on the tax duplicate.

Underground Drains (G.C. Sec. 6653):--When land requires drainage through the land of another and the owners cannot agree, the township trustees may arbitrate the dispute. To carry out this procedure the owner of the upper land shall file a copy of his proposition to the owner of the lower land with the township trustees. The trustees shall fix a time for meeting the owners within ten days. Five days notice of this meeting shall be given the lower landowner by the upper landowner. The trustees shall fix the amount of damages to be paid and the conditions and type of construction. The lower landowner can appeal to the court of common pleas from the decision of the trustees.

Cleaning and Repair of Drains and Water Courses (G.C. Sec. 5691 to 6706):--Ditches, drains, and water courses are under the supervision of the county commissioners who may delegate to the county surveyor the duty of cleaning and repairing. Or, a ditch supervisor may be employed to do the work in one or more townships. The compensation of a ditch supervisor is fixed by the county commissioners but cannot exceed three dollars per day. This expense is paid out of the general ditch improvement fund. Township, single county and joint county ditches all come under the management of the ditch supervisor.

When the land benefited by cleaning or repair work covers an area overseen by two or more ditch supervisors, these shall constitute a board to supervise the work and apportion the expense.

Ditches, drains, and water courses shall be divided into sections so as to equitably distribute the actual work to the landowners according to benefits or in case the work is done under contract, to equitably distribute the cost to the landowners. The ditch supervisors make this apportionment but a landowner can appeal to the county commissioners and finally to the court of common pleas for a reapportionment.

In case a landowner refuses or fails to act, cleaning and repair work can be let under contract at public auction to the lowest responsible bidder.

When the repair work will exceed an estimated cost of $200, notice for bids shall be advertised in a newspaper and by posting in three public places. If the cost is less than $200 posting notice alone is necessary.

Cost of the work done either by contract or otherwise will be put on the tax duplicate and collected as other taxes and assessments.

Interstate ditches also can be cleaned and repaired under the above provisions.

Removal of Drift (G.C. Sec. 6727 to 6776):--This chapter relates to the clearing away of any substance obstructing a water channel such as wood, sand, gravel, weeds, brush, and mill dams.

A person being injured by such stream obstructions can enter the lands of another and clear away the obstructions, after giving the landowner or occupant three days notice in writing. No notice is necessary in case the land is not occupied.

The person entering land for such purpose is liable for any injury done which might be avoided, nor shall he be permitted to remove any of the substances from the land.

The county commissioners can remove any drift, timber, or piling from a water course when such obstructs the free flow of water or endangers a public road, provided thirty days notice be given the landowner and the owner does not remove the obstruction.

The expense of such removal plus 50 per cent penalty shall be placed on the tax duplicate and collected as taxes.

A petition by five or more persons can be filed with the County Auditor requesting that the County Commissioners remove certain drift. The commissioners shall appoint a disinterested person to view the water course, make a report as to whether a state or county road or bridge will be protected by the drift removal and estimate the cost. A contract can be let to the lowest bidder and the expense charged to the county bridge fund.

The county commissioners may remove obstructions as a sanitary measure upon petition of an adjacent land owner, when they believe this will be conducive to the public health. Such a petition must be accompanied by sufficient bond to cover the expenses of investigation in the event the commissioners do not grant the petition. The petitioner must give written notice to other owners of land affected by the proceedings. A hearing is then held by the commissioners and if favorable action is taken the actual work or expense will be apportioned equitably among the land owners benefitted by the removal. If the benefit is general, the cost can be paid by a county tax levy of not more than five-tenths of a mill. Similar action can be taken jointly by two or more counties.

Mill dams can be purchased and removed by the county commissioners and the cost apportioned to the land benefited. The proceedings in such cases are governed by the laws relating to county ditches.

The Conservancy Act of Ohio

The conservancy clause of the State constitution of 1912 (see Forestry) cleared the way for some new developments related to land use. One of these developments was the creation of conservancy districts, the prime purpose of which is an attack on the stream flood problem. However, recent legislation broadens the authority of conservancy districts to also include the functions performed by sanitary districts, water supply systems, and sewer districts. The full text of the Conservancy Act is contained in sections 6828-1 to 6828-78 of the General Code.

The original Conservancy Act was passed in 1914, being declared an emergency measure in order to expedite the organization of the Miami Conservancy District. This initial development was a direct reaction to the disastrous flood of 1913. The Muskingum Conservancy District organized in 1934 represents the second large project developed under this law. These two districts with the proposed Scioto Conservancy District cover most of the land area of Ohio draining into the Ohio River system. The Kenton Conservancy District, officially called the Upper Scioto Conservancy and Drainage District, covers the headwaters of the Scioto River draining the Scioto Marsh in Hardin County. This district is primarily concerned with swamp land drainage and was organized shortly after the original conservancy district law was enacted, the preliminary work starting in 1916. To date, one other project has been organized under this law, - the Springfield Conservancy District.

Although the Conservancy Act does not encompass a complete program of land use in an area, it is sufficiently comprehensive to have considerable influence on other phases. This connection is exemplified by the developments in the Muskingum Conservancy District where the primary idea of flood control is being coordinated with other plans related to soil erosion, type of farming, reforestation, etc., which do influence the uses of land in the entire watershed. A conservancy district is legally a separate political subdivision of the State organized to perform one or more of the functions designated in the next paragraph.

The present conservancy district law, passed March 30, 1937, authorizes the district to do things relating to the following objectives:

(a) Prevent floods.
(b) Regulate stream channels by changing, widening, and deepening same.
(c) Reclaim or fill wet and overflow lands.
(d) Provide irrigation when needed.
(e) Regulate the flow of streams and conserve the waters.
(f) Divert or, in whole or part, eliminate water courses.
(g) Provide a water supply for domestic, industrial, and public use.
(h) Provide for the collection and disposal of sewage and other liquid wastes produced within the district.

Creation of a conservancy district is initiated by petition filed with the clerk of the court of common pleas. The petition may be signed by five hundred freeholders or by a majority of the freeholders or by the owners of more than one-half the property, either in acreage or value, within the limits of the proposed district. Signing of the petition by the governing body of a public corporation can be substituted for signing by the freeholders within the limits of a corporation. Or, the governing bodies of one or more cities can submit a petition.

The Conservancy Act is too long to discuss all the important details of organization or administration; only enough will be said to give some idea of how a district functions. The business of organization is supervised by the common pleas court or courts, of the county or counties within the proposed district. Also this court appoints three directors to administer the affairs of the district, to supervise and draw the plans, employ the necessary personnel and to do all things necessary of a governing body.

Method of finance.- (1) To cover the expenses of organization a preliminary tax of not to exceed three-tenths of a mill can be levied on the property within a conservancy district for a period not to exceed two years. Money may be borrowed in anticipation of collection of this tax up to 75 per cent of the levy.

(2) To cover construction expenses, bonds may be issued to mature over a period not exceeding ten years. The indebtedness created shall not exceed one-half of one per cent of the taxable value of the property in the district. These bonds are retired by levying an assessment at a level rate on all the property of the district.

(3) Special assessments can be levied on all property benefited by the district. Bonds can be issued to be retired by these special assessments.

(4) Loans may be received from the United States government.

(5) "Conservancy maintenance" assessments can be levied annually on benefited property.

(6) In case a conservancy district is organized for the purpose of water supply, the unappropriated funds of the water department of a public corporation can be applied to the payment of assessments or annual levies made by the conservancy district. Also, sewer rentals may be so used.

In order to carry out the purposes for which a district is organized the board of directors have a dominant right of eminent domain over the right of eminent domain of public utility companies and over townships, villages, counties, and cities. Operation of a conservancy district involves the acquisition of real estate, and the construction, maintenance, and operation of large amounts of public property. Also, plans drawn in behalf of the general welfare may encroach on the property rights of individuals, public utilities, villages, and cities, etc. Therefore, it is necessary that a conservancy district have the broad power of dominant right of eminent domain.

Regional or County Planning Commission

The legal provisions related to such planning have their background in urban land use problems and is an attempt to direct the development of the metropolitan areas around the larger cities. However, with a little modification or extension of intention the present law (G.C. Sec. 4366-13 to 19 inclusive) could consistently apply to the more rural areas of the State or at least could include more rural area than was contemplated when the law was drafted. The present specifications of the law enacted in 1923 are briefly as follows:

> Upon petition of the city planning commissions of a majority of the municipalities of a county, the county commissioners shall appoint a board of eight citizens including the county commissioners.
>
> The powers or duties of a regional or county planning commission consist in making plans and maps of the area for systems of transportation, highways, parks, and recreational facilities, the water supply, sewage and garbage disposal, civic centers and other public improvements which affect the development of the region or county.

City or village planning commissions or councils were given authority in 1923 to approve or disapprove the platting of lands within three miles of a municipal corporation. O.L. 110, p. 71. G.C. Sec. 3586-1. This established an extension of zoning authority which was further broadened

under an Act passed in 1935 which provided that a county or regional planning commission must approve the plans for plats and subdivisions of land made anywhere within the county or region where Sec. 3586-1 did not apply. The purpose of such approval is to coordinate the street and highway plans, provide for sufficient spaces for traffic, utilities, fire control, recreation, light, and air, etc. O.L. 116, p. 505, G.C. Sec. 3586-2. Although this zoning authority extends over rural territory the significant fact is that it contemplates urban use and is not an attack on the problem of zoning for rural uses per se.

Park Districts

Section 2976-1 et. seq. of the General Code specifies that in order to encourage forestry and to conserve the natural resources, park districts may be created which may include all or part of the territory within a county and may include territory in an adjacent county. The law was enacted in 1917 and amended in 1919. O.L. 107, p. 65 and O.L. 108, p. 1097. Such park districts represent separate political subdivisions and are administered by a board of three park commissioners appointed by the probate judge. This commission constitutes a corporate body capable of purchasing land, borrowing money, levying special assessments and taxes not in excess of 1/10 of a mill on the taxable property within the district. The commissioners receive no remuneration except actual expenses.

The creation of a park district may be (1) by petition, to the probate judge, signed by a majority of the electors residing in the proposed district; or (2) by resolution (and application to the probate judge) of the board of township trustees, or city or village council within the proposed district.

As previously mentioned, park districts are legally considered separate political subdivisions; as a matter of fact they are intended to be closely associated with the county government in matters of administrative management. Section 2976-10b of the General Code specifies that the county auditor and treasurer shall be ex-officio officers of the district and the fiscal business shall be administered by these officials in practically the same manner as that of the county.

Municipal Forests

Section 3939-23 of the General Code (as amended by S.B. No. 65, 1933, O.L. 115, p. 187) confers the power on municipal corporations: "To acquire by gift, purchase, lease, or condemnation, land and forest and water rights necessary for conservation of forest reserves and water parks or reservoirs, either within or without the limits of the municipality, and to improve and equip the forest and water parks with structures, equipment and reforestation necessary or appropriate for any purpose whatsoever for the utilization of any or all the forest and water benefits that may properly accrue therefrom to said municipality."

The above law is intended primarily to cover the control and utilization of watershed areas associated with municipal water supply. But nothing in the law would prevent its extensive use in the establishment of municipal forests. As a matter of fact up to 1930 a total of 20,690 acres were in municipally owned forests; one-half of this acreage was included in the Cleveland Metropolitan Park, 5000 acres owned by the Akron Water Department, 3500 acres by the Miami Conservancy District, and the remaining 3190 acres were owned by eight other cities and villages. The process of developing municipal forests has been aided by the cooperation of the Forestry Department of the Agricultural Experiment Station. Previous to 1933 the authority to develop municipal forests was granted in G.C. Sec. 5650-1, enacted in 1921. Previous to 1921 Ohio had two municipal forests, one owned by Cincinnati, the other by Oberlin.

State Forestry

The first legislative Act in Ohio intended to promote forestry was on April 16, 1885. The Act provided for the establishment of a State Forestry Bureau at the State University. A board of directors consisting of three members serving for six years without pay was to be appointed by the Governor. An appropriation of $1000 was made to cover the expenses the first year.

The purpose of the Bureau was to investigate the causes of waste and decay in the forests of the State, to conduct research relative to propagation of forest trees, and to suggest legislation necessary for the development of a rational system of forestry. An annual report was to be made to the General Assembly. O.L. 82, p. 135.

The above Act was superseded by the Act of March 15, 1906 which established a Department of Forestry in the Agricultural Experiment Station at Wooster. The new Act widened the scope of duties to include propagation and cultivation and management of wood lots on various types of soil and the determination of the needs for the preservation and development of the forests in the several sections of the State.

The continued deterioration of our forests resources suggested the need for a wider scope of activity than was authorized by the Acts of 1885 and 1906. In order to establish a favorable legal basis for a State forestry program the conservancy clause was written into the State constitution of 1912, Article II, Section 36, as follows:

"Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the State, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of natural resources of the State, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring, and marketing, coal, oil, gas, and all other minerals."

The above section of the constitution confers some special powers, in addition to the general police power. This grant of power was necessary before public action could be adequately applied to several of the land use problems which had arisen since the State was settled. For instance, the power granted in the Conservancy clause of the State Constitution has been cited as a defense against attacks on the legality of certain acts of the Miami Valley Conservancy District and the Mahoning Valley Sanitary District. The Conservancy clause also cleared the way legally for the development of some of the activities of the Department of Forestry more particularly the granting of a partial tax exemption to farm wood lots and the development of a system of State forests and forest parks. One line of activity contemplated in the Conservancy clause, the utilization of forfeited tax delinquent lands for forestry purposes, has never been developed.

Since 1912 legislation relative to forestry has covered several important points in forestry policy. The Act of May 27, 1915 (G.C. 1177-10a to 10c) provided for the purchase by the Experiment Station Board of Control of lands suitable for forestry purposes at not to exceed ten dollars per acre. The Dean and Waterloo forest sites were purchased soon after. However, other appropriations for purchase were not made until 1921. Authority to purchase at a higher per acre price, or otherwise acquire land, was extended in 1923 to include areas to be known as State forest parks. Legislation enacted December 10, 1935 broadened the power of the Board of Control to acquire lands for forestry purposes by purchase, lease, or gift from the Federal Government or other agencies, and to develop, exchange, or sell such lands in order to bring about the orderly development and management of State forests and parks. The above Act did not authorize the use of any tax revenues for acquisition of land but provided that income from the lands be segregated to meet any obligations relating to the land. O.L. 116, Part 2, p. 68. G.C. Sec. 1173-2 to 1173-7. The principal purpose of the above law was to coordinate State forest development with the Federal forestry land purchase program.

In 1921 a new activity was authorized, the control of the forest fire menace in the principal forested areas of the State, both on public and privately owned lands. This law was amended in 1927 to improve its effectiveness.

Also in 1921, legislative provision was made for the acquisition, by local units of government through purchase, gift or condemnation of areas to be known as county, municipal, or township forests to be managed under the direction of the State Forester.

A few additional details of the forestry law and some developments under it follow:

Trees can be planted, land fenced, labor employed, and such other things done as are necessary to develop forest growth. G.C. Sec. 1177-10b. The board of control can sell wood and timber; also land, provided the price exceeds cost and interest on the investment. G.C. Sec. 1177-10c.

The Board is empowered to establish a State forest nursery to supply seedling trees for planting on public forest lands or on private lands on such terms as the Board may approve. Also farm woods or forest tracts can be acquired for experimental, research, and demonstration purposes related to practical forestry methods. G.C. Sec. 1177-10d.

The Chief of the Department of Forestry of the Agricultural Experiment Station is ex-officio State Forester serving in that capacity with no extra pay except expenses. G.C. Sec. 1177-10e. Supervision of forest fire wardens is vested in the State Forester. Fire towers and observation stations are to be maintained in forest areas and rules and regulations made relative to kindling fires on public and private lands in designated forest districts. Any property in forest districts, which due to its condition or operation constitutes a forest fire hazard, can be declared a public nuisance by the State Forester and must be abated by the owner; or on his failure to act can be remedied by the State Forester; in the latter event the expense shall constitute a lien against the property. 1177-10f et. seq,

Brief mention need be given of the activities achieved under the Ohio forestry law in order to indicate the extent of its present application.

Ohio State forests and forest parks now (1938) contain 61,298 acres. The rate of land acquisition dropped nearly to zero in the period following 1933 due to the indisposition of the legislature to appropriate funds for land purchases during the years of depression.

The total acreage in State forests and forest parks is approximately equal in size to one-fourth the area of an average sized Ohio county. This represents only a fraction of the potential area which possibly may be best conserved and developed by State ownership and management.

The distribution of seedling trees is a relatively important activity of the Department of Forestry. During the thirteen years ending in 1936 a total of nearly 42 million trees were distributed to over 1000 different planters. To aid in fire protection a total of 19 lookout towers had been erected in 13 counties up to 1935. These serve in the protection of over 1,000,000 acres or about 4 per cent of the entire area in Ohio.

Amended Senate Bill No. 95 passed November 20, 1934 gives consent to the Federal Government to acquire lands in Ohio for national forests. The State retains concurrent jurisdiction over such areas in the matter of service of all civil and criminal process issued under State authority. G.C. Sec. 1177-11a. The boundaries of such areas must be approved by the Governor and the Board of Control of the Agricultural Experiment Station.

The forest yield tax law was adopted in 1925 and amended slightly in 1927, mainly in order to clarify and not to change the intent of the law. A landowner may qualify his timber land for a partial exemption from the real estate tax by meeting certain requirements. Any tract of land containing at least three acres can be declared to be devoted exclusively to timber growing. Upon determination by the State Forester that the method of management of the land is consistent with good forestry practice and so

long as the rules and regulations prescribed by him are observed, the land is qualified to be taxed as forest land in the following manner:

(a) The bare land shall be taxed annaully at fifty per cent of the local rate upon the actual agricultural value of the land as measured by assessments of similar land in the vicinity. But all improvements and values other than agricultural shall bear the full rate of local taxation. G.C. 5554-2.

(b) Any timber cut and removed from the land of the owner or not used by the owner in the same taxing district is subject to a tax equal to five per cent of the stumpage value. Fifty per cent of the stumpage value tax is for the use of the county and fifty per cent for the support of the State Division of Forestry. G.C. 5554-5.

Up to July 1935, after the law had been in operation for ten years, classification for forest tax exemption had been applied to 51,400 acres of land representing 628 separate ownerships. Six holdings average nearly 3,000 acres each, but the average size is 81.9 acres with few tracts containing less than 10 acres and no great number exceeding 100 acres. Fifty-fourth Annual Report, the Ohio Agricultural Experiment Station, p. 118.

Geological Survey of Ohio

More than a century ago the need for a systematic study of the mineral resources of the State was recognized. Legislative appropriations were made to cover the work in 1836 and 1837 the results of which were published in January 1838 in a volume entitled "The First and Second Annual Reports of the Geological Survey". Inauguration of the work was due largely to the efforts of Dr. S. P. Hildreth of Marietta. W. W. Mather was the first State Geologist.

Considerable progress was made during 1836 and 1837 in surveying the mineral resources including the soils and making topographical maps. Then the work was suspended due to the failure of the Legislature to vote appropriations.

After the State Board of Agriculture was organized in 1846 that body repeatedly recommended that the geological survey be continued. The Board's attitude is revealed by a resolution passed in 1857 as follows: "Resolved, that the Ohio State Board of Agriculture recommend that the Legislature take such action as to insure the prosecution and completion of a geological survey of the State of Ohio, including an analysis of its soils, marls, ores, and the various natural products that will aid in the development of the resources of Ohio and in making them valuable." Ohio Agricultural Report 1857, p. 79. Not until 1869 was the survey continued. Some reorganization of the survey was made in 1890 and again in 1900. Since 1921, when the State departments were reorganized, the geological survey has been a division of the State Department of Education.

Proposed Legislation Relative to Land Use Planning

In view of the likelihood of future legislation a little comment may properly be made of two recent developments related to rural land use planning. These are Zoning and Soil Conservation Districts.

Zoning.- The process of planning for land use is an essential prerequisite of zoning which is an application of the police power in order that objectionable developments may be kept out of an area. Planning, however wise, will at some point be unable to become effective unless some coercive power is available to influence nonconforming users of private land. It is at this point that zoning becomes a necessary tool of land use planning.

Two types of zoning have developed. The first is urban land zoning which is almost universally in operation where urban areas exist. Urban zoning which represents a half century of development emphasizes the protective feature and applies more definitely to the high valued land in urban areas. The second type, rural zoning, is still in the formative stage. Its characteristic feature is the application of corrective measures and, therefore, for the most part applies to the lower valued land.

There is, however, a point where rural and urban zoning meet in areas which are in the initial stages of industrial or residential land use. Such areas are sometimes termed "rurban" to indicate their half rural, half urban development.

So far rural zoning legislation has usually taken the county for the administrative unit. This is the case particularly in Michigan, Wisconsin, and Pennsylvania, which have enacted rural zoning laws. Some other states have adopted rural zoning laws which are more restricted in that they relate for the most part to nonagricultural land uses. Washington passed such an Act in 1935. California, Georgia, Illinois, Indiana, Maryland, Mississippi, and Virginia also have developed some county zoning and several other states in their county planning legislation have laid the groundwork for the use of future zoning legislation.

So far, Ohio has no zoning laws which relate to rural land use, excepting the limited authority possessed by county or regional planning commissioners. A zoning bill was introduced in the General Assembly in 1936 and again in modified form in 1937.

As drawn, these bills were intended primarily to prevent haphazard industrial and residential developments in rural areas adjacent to incorporated territory. A wider rural application was the possibility of roadside zoning to control advertising and other roadside uses of land. The last bill introduced was so phrased as to apply only to the nine most populous counties. These two zoning bills were drawn specifically to control nonagricultural uses of land and could not be considered as direct attempts to regulate the use of farm land.

Zoning also has had a limited use in some states in restricting the use of flood plains, thereby lessening the cost of flood control.

Soil Conservation Districts.- Following the establishment of a Soil Conservation Service in the U.S. Department of Agriculture, authorized by Act of Congress April 27, 1935, some 22 states provided for the establishment of soil conservation districts in 1937. This legislation was sponsored by the U.S. Secretary of Agriculture who was authorized by Congress to require such State legislation as conditional to the spending of federal money for soil erosion control. So far the State legislation has been encouraged but not required.

The plan, like zoning, authorizes the use of the police power to prevent non-conforming uses. It differs from rural zoning in that each farm or each tract of land might possibly be subdivided into several sub-areas each approved for a particular use whereas zoning, in the usual sense, establishes certain uses on larger contiguous areas.

COOPERATIVES

Mutual Insurance Associations

Historically, mutual insurance associations represent one of the first and most successful types of cooperative enterprise developed in Ohio. Four mutual fire insurance companies were incorporated by the Ohio Legislature in 1843 by special Act in each case (O.L. Vol. 41, pp. 33, 94, 178, 183) and there were other previous special Acts.

The business done by this type of association has become extensive. On January 1, 1938 there were 118 mutual assessment associations usually operating on a county or township basis, and usually organized to carry farm risks only. In addition to the above a total of 23 Ohio mutual fire insurance companies and 71 foreign mutual fire insurance companies were doing business in the State but the most of these were concerned with the insurance of non-farm property.

Mutual protective (insurance) associations have usually operated on a county or smaller area basis and have usually collected assessments at the end of a period to cover previous losses. Mutual insurance companies operate over larger area and usually collect advance premiums. The following description relates primarily to the development of laws dealing with mutual protective associations; but in the initial stages the law did not differentiate between the two types of organization.

On May 1, 1852 the Ohio general assembly passed an Act "To provide for the creation and regulation of incorporated companies in the State of Ohio."O.L. 50, p. 274. Special provisions in this Act related to railroad companies, turnpike and plank road companies, "magnetic telegraphic" companies, gas light and water companies, bridge companies, manufacturing companies, religious and other societies. This Act did not specifically mention mutual

insurance companies. However, five years later, April 14, 1857, an Act was passed which provided that when any number of persons (a minimum of five) as required by the first section of the Act of May 1, 1852, associate to form a mutual insurance company, the same general corporate powers would be conferred as on other companies by the Act of 1852, subject to certain obligations and restrictions. O.L. 54, p. 114. The more significant of these obligations and restrictions were:

(1) A person becoming a member must give his promissory note to cover his probable future assessment as determined by the directors, and must pay not exceeding five per cent of the face of the note in cash to cover incidental expenses.
(2) The liability of a stockholder was limited to the amount of his note but this would be secured by the real estate insured.
(3) Assessments were prorated to members on the basis of the size of their notes held by the company.
(4) Policies could be issued for a term not exceeding five years.
(5) Losses must be paid within three months.
(6) No insurance policies could be issued until twenty-five thousand dollars in premium notes were in the hands of the company; also twenty-five hundred dollars in cash.
(7) An annual report must be filed with the Auditor of State.

Section 20 of this Act provided for township mutual insurance companies. These were given the same general powers as enumerated above excepting business could be commenced when twenty thousand dollars in notes and one thousand dollars in cash were in the hands of the company.

It may be observed that the Act of 1857 established a method of operation which was further modified in 1877 to provide for mutual protective associations.

The Act of 1857 was amended April 3, 1862. O.L. 59, p. 36. The most significant change was the provision that companies issuing insurance in single townships could begin business when twelve thousand dollars in premium notes and one thousand dollars in cash were collected by the company.

By the Act of March 30, 1877, the legislature provided a general law to authorize the organization of mutual fire insurance associations. The law provided that ten or more persons could form such an association for their mutual protection against fire. The method of assessment was to be provided by the constitution and by-laws. Evidence of incorporation was through the preparation of a certificate filed with the Secretary of State. R.S. 3686-3687, O.L. Vol. 74, p. 66.

The above law was amended April 14, 1884 to permit five or more persons to organize for protection against loss from death of domestic animals. O.L. V. 81, p. 185. The following year the Act was amended again to include livestock losses from lightning and wind storms.

In 1889 the insurance against loss of domestic animals was conditioned by the requirement that policies could not be issued until applications to the amount of $50,000 had been filed. O.L. V. 85, p. 377. The same Act provided for supervision by the State superintendent of insurance.

In 1898 the law was amended so as to allow insurance of farm buildings, detached dwellings, school houses, churches, township buildings, farm implements, farm products, household goods, "and other property not classed as extra hazardous". O.L. V. 93, p. 335.

In 1904 the law was amended to cover losses from hail and explosions from gas. Also more specific regulation by the superintendent of insurance was provided: an annual certificate being issued each association at a cost of $5.00 following a report as to the business condition of the association. O.L. V. 97, p. 150.

In 1910 an amendment authorized an association to borrow money temporarily to pay losses before the next assessment date. Also it was provided that a surplus could be built up by assessments not exceeding $2.00 on each $1000 of insurance in force. O.L. V. 101, p. 294.

In 1911 the law was amended to allow larger assessments to create a surplus fund equal to the losses of the past three years when the insurance covered property classed as extra hazardous. O.L. V. 102, p. 422.

In 1917 an amendment was passed to extend the insurance to motor vehicles, electric motors, electric appliances, and lighting systems. O.L. V. 107, p. 696.

In 1919 the law was amended to specify that when the liabilities of a mutual livestock insurance association exceed seven per cent of the outstanding insurance it shall be deemed insolvent and the charter forfeited. The superintendent of insurance is required to enforce the disbandment. O.L. V. 108, p. 72.

In 1933 the law was amended to empower mutual insurance associations to make contracts for reinsurance in order to prorate risks and thereby stabilize annual assessments. O.L. 115, p. 203.

In 1935 the law was amended to permit the accumulation of a surplus not exceeding $5.00 on each $1000 of insurance outstanding. O.L. V. 116, p. 237.

Mutual insurance associations at the present time represent a well established development. The changes that have been made in the law from time to time illustrate well how the legal framework of an institution can be developed and modified to fit into the conditions of a particular time. This type of association probably owes much of its success to the fact that the service is of a fairly simple type which can be rendered with little overhead expense so long as the business is conducted on a relatively small scale. In recent years the policy of reinsurance to pool risks is gaining headway and tends to give the same stability to the small farm mutual as to the larger companies. A present tendency, also, is to shift to a system of advance assessments to cover one year's estimated cost of insurance. For the present law see G.C. Sec. 9593 to 9607.

Cooperative Trade Associations

Mutual assistance was a commonplace experience in pioneer life. For the most part this was an informal type of neighborhood activity although there were a few attempts at business organizations among pioneer farmers.(1) The Miami Exporting Company was organized in 1803 for the purpose of finding a market for farm products and for some years engaged in the transportation of produce to New Orleans. It was not a cooperative organization but was an association of farmers and merchants. The Licking Exporting Company, organized at Granville in 1820, was composed of farmers. Hogs were driven to Sandusky, there slaughtered and packed and shipped to Montreal. This initial shipment brought financial loss and discouraged further enterprise by the company.

No legislation was enacted in the State to foster cooperative trade associations until after the Civil War. On April 13, 1867 the Ohio legislature passed an Act "to provide for the creation and regulation of cooperative trade associations". The Act provided that ten or more persons could associate themselves together for the purpose of purchasing grain, goods, groceries, fruits, vegetables, provisions, and any other articles of merchandise in quantity and distributing the same to consumers at actual cost and expense of purchasing, holding, and distributing the same. O.L. V. 64, p. 145.

Some restrictions were provided:

(1) Not less than 10 persons could incorporate the association.
(2) The capital stock could not be less than $2000.
(3) Operations could begin when 25 per cent of the stock had been subscribed.
(4) Officers could be bonded.
(5) Stockholders could be held for an amount equal to and in addition to the face value of the stock for benefit of creditors.
(6) Dividends from profits were to be distributed to stockholders in proportion to purchases.

The cooperative trade association Act of 1867 seems to have been inspired by the movement which resulted in the organization of the National Grange in the same year.

An Act passed March 29, 1867 authorized the incorporation of elevator companies. Nothing in the Act limited the organization to farmers or specified the use of cooperative principles in the conduct of the business.

Two years later, 1869, the Corporation Act of 1852 was amended to provide for the formation and encouragement of floral, horticultural, nursery, and fruit companies. O.L. V. 66, p. 14. Nothing in this Act provided for a purely cooperative type of organization. However, a section was added to the same law in 1874 to provide for the organization of companies "for the promotion of agriculture and the mutual benefit and gain of those engaged therein in the purchase and sale of stock, commodities, and articles pertaining thereto, including household necessities and luxuries". O.L. V. 71, p. 161. The Act did not provide for the cooperative type of

(1) See Ohio Agricultural Experiment Station Bulletin 326, The Agriculture of Ohio, p. 82, for a description of early agricultural organizations.

organization, its principal significance being that the amendments of 1869 and 1874 specially contemplate association of persons engaged in agriculture for purposes of selling whereas the Act of 1867 was more directly concerned with purchases and applied to the organization of consumers cooperatives.

On May 3, 1878 the Legislature further amended an Act of 1867 which was supplementary to the corporation act of 1852. As related to agriculture the principal new additions provided for the formation of wool growers associations, having for their object the establishment of wool houses for the handling of wool and other produce, for doing a commission business, the furnishing of supplies to wool growers and others. Another subsection of the amendment provided for corporations for the protection of birds and other game; and another subsection for the protection of horses, mules, and other livestock, and for prosecuting thefts of same. O.L. V. 75, p. 129.

Further modifications of the general corporation laws made by the Act of March 19, 1884 permitted a company to function more nearly on the cooperative principle. This Act provided that (1) a corporation in its articles of incorporation could limit stockholders to one vote irrespective of the a mount of stock an individual might own. But when such limitation existed the following provisions would apply: (a) No person could hold stock in excess of one thousand dollars face value. (b) The directors must file an annual report, containing a financial statement, in the county recorders office. Failure to do so would make the directors personally liable for all claims against the company. (c) Through its by-laws the corporation could provide for the distribution of its net earnings among its workmen, patrons and shareholders. O.L. V. 81, p. 55.

Little legislation relating to cooperative trade associations was enacted for a generation following the initial development after the Civil War. In the meantime some associations of farmers were organized under the cooperative laws previously enacted and others, for example some elevator companies were organized as stock companies under the general corporation laws mentioned above.

Some revival of legislative interest in agricultural cooperatives came in the period just preceding the World War. An Act was passed March 25, 1913 (Sub-Senate Bill #78) to provide for the appointment of a commission to investigate the subject of rural credits and cooperative agricultural societies and to suggest legislation in conformity with the findings. A total of $3400 was appropriated for the purpose, $2400 of which was to apply to the expenses of a visit to Europe by two members of the commission to investigate cooperative methods in order that a sound system of agricultural finance might be established in Ohio. This resulted in no immediate legislation; but events following the World War gave new impetus to the cooperative movement which resulted in some very important legislation.

The Griswold Act in 1920 authorized the incorporation of agricultural cooperatives but placed the status of financial responsibility of members on a rather unsatisfactory basis as compared with that of stockholders in an ordinary business corporation. The Act provided that each

member of the association would be held liable for his per capita share of all debts. However, the total debt which the association might incur could be limited by the members; the trustees of the association would be financially liable for any additional debt.

The Brand Act, passed in 1921, was an addition to the prior law and provided for the organization of cooperative marketing associations both corporate and unincorporated and with or without capital stock. O.L. V. 109, p. 50. All such associations were declared to have a public interest and, therefore, subject to regulation vested in the State public utilities commission which was charged with the duty of preventing restraint of trade or lessening of competition through the activities of any association. In order to provide for an active control, a cooperative, upon its organization, was to pay $100 into the State Treasury to be used by the public utilities commission in investigating the activities of cooperatives; and annually, thereafter, a like sum or such part of it as the commission might deem necessary to cover the expenses of investigations and hearings. The fact that this law virtually classed cooperative marketing associations as public utilities and subjected them to a substantial annual fee might have retarded their development. The modifications made in the law in 1923 were important in that they provided a more favorable legal basis for cooperative business. Before discussing the law of 1923 a few developments in the federal laws should be mentioned.

Farm marketing associations had at times been threatened with prosecution under the anti-trust laws on the charge of restraint of trade. This was true despite the fact that associations of farmers were not intended to be subject to the anti-trust laws. For instance, the Clayton Act passed by Congress in 1914 provided that none of the Federal anti-trust laws should prevent the operation of agricultural associations without capital stock when organized for mutual help and not for profit. However, court decisions and the laws of some states (the "Valentaire Act" in Ohio) did not permit liberties to farmers not allowed other lawful organizations; as a result, rival business interests always were ready to question any cooperative development.

To remove this threat Congress passed the Capper-Volstead Act in 1922 which specifically authorized farmers to associate in corporations, with or without capital stock, to prepare and market their products in inter-state and foreign commerce. Associations could combine in the use of common marketing agencies. Other definite provisions were: (1) the associations must be operated for the mutual benefit of producers, (2) every member could have only one vote, (3) dividends on capital were limited to 8 per cent, (4) products of non-members could be handled but in amount not to exceed that of products handled for members.

The Farmsworth-Green Bill was enacted by the Ohio Legislature in 1923 to repeal and recodify the two laws, mentioned above. The provisions of the Ohio statutes were modified to conform with the Federal Act of the previous year and removed the threat of prosecution for restraint of trade in intra-state commerce just as the federal law did in respect to inter-state commerce.

The Act of 1923 (G.C. Sec. 10186-1 to -30) has been modified but slightly up to 1938. In 1933 an amendment was adopted to further clarify the point that two or more associations through meeting in conference with two or more purchasers can make agreements relative to joint enterprises or to prices without being considered to be acting in restraint of trade. Sec. 10186-23, O.L. V. 115, p. 282.

The development of the legal framework of agricultural cooperatives as described above, is the result of the slow accretion of experience and also the formation of a more positive philosophy relative to the duties, rights, and privileges under the law, of farmers associated together for self help. Public policy at present seems fairly well in accord with the principles established in the Ohio law which explains why little State legislation has been enacted since 1923.

Farm Laborers' Associations

Farm laborers' associations were empowered to incorporate by the Act of May 7, 1877. O.L. V. 74, p. 204. The authorized purpose was to promote the interests of agriculture and for the relief of distressed farm laborers, or their widows and orphans and for any other charitable purpose which may be deemed proper by any such association connected with agricultural interests.

The above law is still on the books. G.C. Sec. 10179.

HIGHWAYS

One of the most important public functions today is the construction and maintenance of the rural highway system by the State, counties, and townships. Highways are maintained for the common benefit of the public and cannot be considered as an enterprise related to agriculture alone although farmers can be said to have a peculiar interest in highways in that they represent the necessary medium of transportation of farm products, are a definite expense to the farmer, influence real estate values and also, the less tangible but real, community values.

The highway laws are too extensive to be fully presented herein, the purpose of their mention being only to point out the development of the present public policy relative to highways.

In the early history of the State the first urgent need was to open up and maintain a system of earth roads to serve every community and farm. These roads were designated as township, county, or State roads. But for the most part construction and maintenance were a local affair in the hands of the township trustees and road supervisors. Every able-bodied male citizen from 21 to 60 years of age was required to give two days labor (as a poll tax) on the roads annually and people were permitted also to work out their township and county road tax as levied on the tax duplicate. This system maintained roads which today would be considered highly unsatisfactory.

When traffic on a road seemed to warrant further improvement it was often customary to turn the construction and maintenance over to a private corporation organized for the purpose. Turnpike and plank road companies reached the peak of their development between 1830 and 1860. Prior to the Civil War an anomalous situation developed where some highways were constructed and operated with private capital whereas the State was borrowing money to purchase stock in railroad and canal companies.

The Legislature passed a general Act in 1811 relative to the specifications for the construction of roads by turnpike companies charging tolls. The right of way was not to exceed 66 feet in width, 33 feet of which was to be cleared of brush and logs, and at least 18 feet was to be made an "artificial" road composed of stone, gravel, wood, or other convenient materials well compacted together in such manner as to secure a firm, even, and substantial road rising in the middle with a gradual arch, and in no case "shall the ascent in any such turnpike road be greater than five degrees". The tolls allowed, according to the Act of 1811, on each turnpike road were specified in the special enabling Act passed by the Legislature in each instance when a turnpike company was organized.

Purchase of toll roads by the county or State was a right reserved in the Act of 1811. The terms were: each turnpike company was required to keep a strict account of all costs and operating expenses. An annual profit of 12 per cent was allowed on the investment. The State or county could purchase the road at any time upon payment of a sum which, when added to the tolls collected, would equal the cost and expenses. O.L. V. 18, p. 283. Although under private management, turnpike companies were operated as a type of public utility. Some records exist which indicate that mismanagement and dishonesty sometimes lowered the type of service and increased the cost to the public. This was liable to be the case when public money was used to purchase stock in the turnpike companies.

On November 15, 1851 the State held a partial interest in 24 turnpike companies through the purchase of $1,853,365 of stock. Private individuals held stock valued at $1,917,638 in the same companies. On that same date the State also owned $570,000 stock in canal companies and $593,783 stock in railroad companies. This subscription by the State to privately managed corporations resulted in some financial embarrassment. The State on its part relied on the income from the individual enterprises to meet its internal and external debt obligations. This income was not always received.

We do not know what weight to give to the reasons relative to a change in the public policy toward road construction. Perhaps the inconvenience of paying tolls, perhaps the mismanagement of some toll roads, and the apparent private gain at public expense on others, caused the construction of free turnpikes to gain headway after the Civil War. A total of 17 turnpike companies were incorporated in 1856 and five in 1871. In 1876 there were 144 incorporated turnpike companies operating 1236 miles of toll roads. In the same year there were 910 so-called free turnpikes containing 4915 miles.

The rate of toll charges.- It is of interest to know something of the expense involved in traveling a toll road. Toll charges as fixed by the Legislature varied considerably on different roads, being adjusted in accordance with road construction and maintenance costs and volume of traffic. The rates charged by the Wheeling and Cadiz Consolidated Road Company in 1856 are fairly typical. For each ten miles of travel the following tolls were collected:

One horse vehicle	15¢
For each additional horse	10¢
Horse and rider	8¢
Stage coach and four horses	50¢
Led or driven horses, mules, and asses six months old or older	4¢
Neat cattle	2¢
Hogs	1¢
Sheep	½¢

For distances under ten miles a proportionate reduction was made in the toll. Persons going to or from church, funerals, elections, court (jurymen), and militia musters could pass free; also U.S. troops. On some roads persons on horseback going to or coming from a grist mill could pass free.

Later general legislative acts established uniform tolls on certain types of roads. Such acts were passed in 1882 and 1889. The Act of the latter year increased the rates slightly over the previous Act and were as follows for each ten miles of travel:

Four-wheeled carriage and one horse	15¢
Each additional horse	5¢
One-horse sled or sleigh	5¢
Each additional horse	5¢
Horse and rider	5¢
Stage coach and two horses	20¢
Each additional horse	10¢
Two-wheeled carriage and one horse	15¢

But the law of 1889 provided that when a road was constructed and kept in repair with two-thirds broken limestone higher rates could be charged. These rates graded about five cents higher for each horse for each ten miles than the rates stated above.

Toll gates were spaced at ten mile intervals, although on some roads "half" toll gates were spaced at five mile intervals and "quarter" toll gates at two and one-half mile intervals.

Travel fifty to one hundred years ago cannot be very accurately compared with that of today. Certainly, our greatly increased population and facilities for travel have increased the volume of traffic and diminished the unit cost per mile of travel. For the usual modes of transportation

with horse-drawn vehicles, travel on toll roads would cost from 1½ cents to three cents per mile per vehicle with a general average of about two cents per mile for the more right to use the road. This cost was obviously much higher than present costs arising from motor fuel taxes and motor vehicle licenses.

Toll roads were being converted into free roads and free roads were being gradually improved through the use of property taxes and assessments prior to 1900. By that date few toll roads remained in Ohio although they were not legislated out of existence until 1910. But the real impetus to road improvement was generated by the advent of the automobile. The results have been very important from the standpoint of agriculture. First, let us consider the policy of finance.

Prior to the development of motor vehicle transportation the policy was fairly well developed that property taxation aided by additional special assessments on real estate was a sound method of financing highways. It is important to note that when this policy developed most highway traffic was purely local in character. We had passed from that period when the stage coach and freight wagon traveled long distances, and automobile and truck traffic was not yet existent.

But presently, 1900 to 1910, motor vehicles began to travel the roads everywhere and people generally developed the urge to own a car and drive it on a good road. The result was not an unmixed blessing to farmers, for wholesale road improvements were financed by the old method of property taxation and special assessments on the adjacent farm real estate.

It is true that before long, 1908, motor vehicle licenses were required but these were not at first an important source of revenue. The gasoline tax was adopted in 1925. In the decade of 1920 to 1930 the belief developed that roads should be financed to a large extent by the traffic. Changes in the property tax laws since 1930 have tended to bring this to pass for most townships and counties have either levied no property taxes for road purposes or have reduced them to small volume. Payment on bond issues for road purposes must continue for some years but this load on property is also being reduced.

To summarize: When the State was organized in 1803 the policy was to open up and maintain a system of earth roads. Nearly all the labor on these was without pay, for the law required two days free labor to be donated annually by every able-bodied male inhabitant 21 to 60 years of age. Improved roads or "turnpikes" were usually built and operated by private corporations charging tolls. This was an adaptation of the policy of charging for the service rendered. In the forty years following the Civil War the policy was rapidly changed by making nearly all roads free to the traveler, maintenance and improvement costs being almost entirely paid out of property taxes and special assessments on real estate. Free labor on local roads also became an obsolete practice in the decade of 1900 to 1910 and the law was repealed in 1915. Motor vehicle traffic has brought back the policy of letting the traffic bear the cost but the transition was too slow to save the farmer from a period of high taxes and special assessments levied to improve the

road system. The road laws were thoroughly revised in 1915 but the finance still depended mainly on property tax levies and special assessments. This tax expense was a contributing cause to the rapid increase in real estate tax delinquency since 1925. Only since 1930 can it be said that our policy of road finance has been established on a system which assesses most of the cost on those who travel the roads. Thus, we have returned to about the same policy used a century ago; one difference being that instead of paying tolls, which would be inconvenient to the traveler and expensive to collect, we pay motor vehicle licenses and motor fuel taxes. Another difference is that complete public management of the road system is now the accepted policy.

Changes in the administration of the highway system have been brought about by the development of motor vehicle transportation. With slow rates of speed on roads adapted to horse-drawn vehicles, short distances of travel, and with most traffic local in character, the township and county were the logical administrative units for construction and maintenance of the entire road system. Some State aid for roads had been granted from 1804 to 1850 and was re-established in 1904 with the organization of a State Department of Highways. In 1911 a system of State roads known, until 1927, as inter-county highways and main market roads was authorized.

The tendency since then has been to add more roads to the State system and also to transfer mileage from the townships to the county systems. A fundamental reason for this change is the need for heavy equipment to construct and maintain roads suitable for motor vehicles. The desirability of having a uniform type of construction and maintenance also favors the larger administrative unit. As reported by the State Department of Highways on January 1, 1937, the State road system contained 14,659.67 miles, the county system, 27,154.80 miles, and the township system, 44,304.39 miles. Only 20,617.63 miles of earth roads remained of which 19,003.67 miles were in the township system.

FARM TAX POLICY

Legislation in respect to taxation is legion. The following description is limited to only some of the high spots in tax developments in Ohio and only so far as these seem to relate to farm tax policy.

Public policy in respect to taxation is closely associated with what is done with the money. On the one hand the inherent reluctance of people to pay taxes often has been the principal limiting factor on the magnitude of governmental services. On the other hand, the popular demand for services creates a constant pressure operating to increase taxes and expand the tax system. The point where these two forces meet marks the level of taxes and also to some extent models the tax system. For instance, peoples' ability to pay taxes in the early 1800's was relatively small; but this would hardly explain why schools were kept on a subscription basis until 1825 and why road improvements were often made with private capital rather than at public expense.

The first constitution of Ohio drafted in 1802 mentioned taxation only in section 23 of Article VIII which declared: "That levying taxes by the poll is grievous and oppressive, therefore, the Legislature shall never levy a poll tax for county or State purposes." With the above exception the power of taxation was left entirely to the discretion of the General Assembly. As a matter of fact the territorial system of farm taxation was continued with slight modifications until 1825.

The first tax system.- Prior to 1826 real estate was taxed only for State purposes. The method was an adaptation of the Kentucky system. Wild land was not taxed. Occupied land was classified as first, second, and third quality, depending on its productivity. The following data indicate the rates levied in various years on each 100 acres of land:

	1800	1816	1825
First quality land	$0.85	$3.75	$1.50
Second quality land	0.60	3.00	1.25
Third quality land	0.25	2.00	0.75

Each person was required to list his land under oath. Delinquent land taxes could be collected by distraint and sale of personal property or by sale of a sufficient amount of each tract of land to pay the tax and penalties.

Specific taxes were levied on certain types of livestock for county purposes. In 1803 the rates were: neat cattle, 3 years old or older, 12½ cents each; horses, 3 years old or older, 30 cents each.

Various businesses such as taverns, ferries, and merchants selling foreign goods were subject to licenses which raised some revenue. A poll tax of two days labor was levied for township road purposes. This was usually worked out but could be paid in cash.

The general property tax adopted.- A system of advalorem taxation of real and personal property became effective in 1826, viz: lands and town lots, including buildings, horses, cattle, pleasure carriages, and merchants' and brokers' capital, to which money loaned at interest was added in 1831. This so-called uniform rule of property taxation continued until 1930 being further entrenched by becoming constitutional law in 1851. In other words, the so-called "uniform system" of property taxation was in operation for a century.

Taxing all property rights according to their value in money had the popular appeal of uniformity. In reality there was a time, when the objects of wealth were relatively simple and mostly in tangible form, when the economy of Ohio was principally rural, that the uniform property tax was fairly equitable. Those conditions changed rapidly after the Civil War but not until 1931 was a different system, the classified property tax put into effect. Farmers suffered most from this lag in reform due to the fact that the uniform property tax was still reasonably effective in respect to farm property but failed to reach the tax paying ability associated with the growing mass of intangible property rights and non-property incomes.

Efforts to reform the general property tax began in the 1880's. Most attention was centered on better administration but this had little apparent effect on farm tax burden. About 1885, Ohio adopted the policy of using persons popularly (or unpopularly) called "tax ferrets" to search out tax evasion. This system was used for a number of years but was very unpopular partially due to occasional grafting by investigators as well as to the inquisitorial methods employed.

The next important attempt at reform was the adoption of a tax rate limitation in 1910. It was argued that the non-return of personal property for taxation was due to the excessively high tax rates - that if these could be kept down to a reasonable figure, 10 mills, that intangibles would be declared for taxation and thereby reduce the burden on real estate. The second part of the plan was to reappraise real estate to insure its being taxed on a 100 per cent valuation. Actually, the valuation of real estate in Ohio was increased from about 1.7 billion dollars in 1910 to 4.3 billion in 1911 and personal property from .8 billion to 1.9 billion. Following 1910 the tax rates were gradually increased so that at the end of two decades the rate limitation law was practically ineffective.

Faith in the usefulness of a tax rate limitation continues for in 1933 a one per cent limitation was written into the State constitution in order to prevent legislative tinkering with the law. Since outside levies can be voted by the people even the present law cannot prevent heavy taxation of property although the difficulties attending the increase in levies will encourage the use of other taxes so far as possible. At least it can be said that a large measure of control rests directly with the electorate which must give consent to any new levies outside the 10 mill rate limitation.

The tax system expands.- Between the Civil War and 1900 it became increasingly evident that the general property tax could not be used with perfect satisfaction for both State and local revenue, due partly to the difficulty of distributing the cost of State government to local units in an equitable manner. Also, as governmental services were expanding the burden of property taxation became more irksome. By degrees Ohio worked toward the policy of leaving property taxation for local finance, supporting State activities by other sources of revenue principally business or so-called "indirect taxes". The last levy on property by the State was the World War compensation bonds, the last of which were retired in 1932. But changes continue. In the past decade or two the support of even local governmental services has been too much burden for the property tax system, and supplemental revenues have been allocated to local governments particularly for schools and highways and finally for poor relief. The most radical changes in the tax system in a century have all come in the past ten years, precipitated by unsatisfactory economic conditions to be sure but at the same time long overdue if we take the view that a tax system should be kept in adjustment with the socio-economic system which it is supposed to serve. By 1936 the property tax yielded slightly under one-half the public revenue collected in Ohio for State and local purposes.

To summarize: Ohio early adopted the policy of using advalorem taxation of all property as the backbone of the State-local revenue system. In early days this worked no special hardship on agriculture due to the fact that our economy was dominantly rural, property mostly tangible in form, non-property incomes relatively unimportant and the services of government on a low cost basis. Can it be said that Ohio has ever formulated a farm tax policy? Strictly speaking, no. The word of the law and the actual administration have been centered for the most part on the application of the theory that the advalorem taxation of all property was a just and equitable practice.

But some breaks have come in the practice of this theory which do affect farm tax policy. The first of these was provided for by the constitution in 1912 which recognized the need for the adoption of better forestry practices and gave the legislature the right to provide for the taxation of forest lands by some other method than the uniform property tax. In 1925 a forestry tax law was passed, as discussed under forestry.

The classified property tax, effective in 1931, has operated to reduce the tax collections levied on farm chattels as well as on nearly all types of personal property. While this was not aimed specifically to apply a special policy to farm taxation it has, through the method of figuring the taxable value and the exemption, somewhat lightened the burden.

More recently, in 1934, it was legislated that real estate as valued for taxation would not include deciduous and evergreen trees, plants, and shrubs. Previously, growing crops were not included in the tax valuation but the above amendment also would exclude forest trees, orchards, vineyards, etc., and, therefore, approaches one step nearer to making the general property tax apply to land only.

The above events at least imply a certain amount of legislative recognition that farm taxation presents some special problems which were arising under the old system of uniform property taxation.

Farm Trucks.- Motor trucks owned and operated by farmers for transportation of farm products and farm supplies were given some preferential treatment in respect to the annual license tax under the terms of a legislative Act of March 31, 1937. Under the terms of the above Act a lower rate tax applies to farm trucks as compared with commercial vehicles; namely, 50 cents per cwt. up to 3000 pounds as compared with 70 cents per cwt. up to 2000 pounds for trucks doing commercial hauling. A farm truck was defined as one where 75 per cent of the use was transportation of farm products or supplies for the owner's or operator's use. The above action arose from the fact that as a rule trucks owned by farmers are driven fewer miles and result in less wear and tear on highways than commercial vehicles.

The above discussion relates to property taxation and does not include special assessments on real estate. Some mention should be made of the latter due to the fact that special assessments on farm real estate have often exceeded the economic benefits accruing to the property from public improvements. In such cases special assessments are in effect an additional tax, often a ruinously heavy tax causing financial embarrassment. This is

demonstrated by the fact that about two-fifths of all rural real estate tax delinquency in the period of 1928 to 1932 arose from special assessments.

Development of policy relative to special assessments.- The expense of county and township drainage ditches has been assessed against the benefited land from the time this activity became a public function in Ohio in the 1840's and '50's. The use of special assessments for road improvements came later following the demand for the construction of free turnpikes and the purchase of toll roads. Still more recently conservation districts, park districts, sanitary districts, sewer districts, and water supply districts, etc., have been given the authority to levy special assessments against rural real estate when some special benefit was conferred on the land. However, as affecting rural land, the use of special assessments by such districts has been relatively limited as compared with their use to improve roads which will now be discussed.

Although the first law providing for special assessments on farm real estate for road purposes was enacted in 1878, what amounted to a voluntary method of assessment was in operation for decades previous to that date. It worked about as follows. The first laws dealt mainly with locating and opening up roads rather than with improvement. Such laws were enacted in 1792, 1804, 1808, 1824, and 1831. Roads were usually located as the result of a petition by interested persons who were held responsible for some share or even all the expense. For instance the law of 1831 provided that county commissioners could alter the route of a State road upon petition but the petitioners were bound to put the new route in as good condition as the old within one year. County and township roads were established or altered by petition to the commissioners or trustees. But only the expense of surveying the route of a county road was paid out of county funds, the work of opening the road was provided by the two days free labor and donations by interested persons. The petitioners for a township road were required to pay all expenses of surveying and opening the road.

By 1845 people were becoming interested in establishing free turnpikes supported by taxation and free labor. So, a law was enacted which provided that the real and personal property taxes for road purposes within two miles of a road could be used for construction and repair. Supervision over such free turnpikes was by a board of commissioners appointed by the county commissioners. This board was declared to be a corporate body to exist for a period up to 10 years. O.L. 43, p. 106.

The laws relative to free turnpikes were amended frequently for the most part to meet variations in circumstances and not to change the policy which remained approximately as follows until 1878.

(1) A free turnpike could be established by a petition to the county commissioners by a majority of the land owners who resided within the bounds of the proposed road district.
(2) This road district covered the area up to two miles on each side of the road.
(3) Supervision over the road was by a board of road commissioners appointed by the county commissioners.

(4) Two days free labor was required by all persons liable for such on the public highways.
(5) The law provided for donations of land, labor, and money in order to improve a road.

Legislation relative to road improvements was enacted in 1845, 1846, 1848, 1850, 1867, 1868, 1871, 1872, and 1875. In the latter year the Legislature provided for the issue of bonds to construct and improve roads and three years later, 1878, special assessments on real estate were authorized to retire bond issues.

An Act of 1875 repealed in 1915 provided for what was known as "one mile assessment pikes". Petition of the majority of the resident landowners addressed to the board of county commissioners gave that body the authority to establish a district extending one mile on each side of a road. A tax not exceeding one mill could then be levied for not more than 25 years on the real and personal property in the district to improve the road.

In 1878 "two mile assessment pikes were authorized to be similarly established to cover both road improvements and purchase of toll roads. However, this law provided that special assessments were to be levied on the real estate and the intention was to apportion assessments according to special benefits.

Coming down through the years, nearly every session of the Legislature modified the road laws in some respect. Finally, the law covering the procedure of improving highways was entirely rewritten in 1915. In respect to special assessments provision was made for levying these on State, county, and township roads. Real estate could be assessed up to 33 per cent of its value for taxation to construct a State road, the assessments to run over a period of not more than ten years and to be prorated by the township trustee s according to the special benefit accruing to the property.

On county roads special assessments could, and still can, arise through either of two methods: (1) through petition of 51 per cent of the resident land owners who were to be specially assessed; or (2) when the road improvement project was approved by a unanimous vote of the county commissioners. The special assessments might apply to abutting land, or to land situated within one-half mile, one mile, or two miles on each side of the road.

Section 6919 of the law, which provides the above authority also authorized eight different methods of calculating the portion of the road cost to be paid by special assessment grading all the way up to 100 per cent of the total expense. Due to the fact that land owners as well as public officials have often over-estimated the benefits accruing to land from road improvements it is no wonder that some farms were greatly over-assessed.

Section 3298-13 of the above Act provided that township trustees could assess all or any part of the cost of improving a road on the land lying within one mile of the road on either side.

In 1917 township trustees were given about the same leeway in method as was given in 1915 to the county commissioners, excepting that the trustees were still limited to levying assessments on land within one mile of a road.

The tendency has been to reduce special assessments on State roads. Prior to 1917 these were assessed by the county commissioners as a part of the local share of the road improvement expense. There are some exceptions but in general the provisions of Section 1214 which govern special assessments on State roads by the Director of Highways since 1917 have been modified from time to time as follows:

1917 - 10 per cent to be assessed against abutting property.
1925 - 5 " " " " " " " "
1927 - 5 " " " " " " property within one mile.
1929 - all or any part of the cost of the surface exceeding 20 feet in width provided 51 per cent of the land owners give their consent.

Also Section 1199-6, as amended in 1929, specifies that county commissioners can assess any part of the cost of improving a State road against the benefited real estate in counties with a tax duplicate in excess of 300 million dollars. In such cases the assessments can be apportioned according to any of the plans provided in Section 6919, namely on property abutting on the road or within one-half mile, one mile, or two miles of the road. At present, the use of Section 1199-6 would apply only to the seven most populous Ohio counties and, therefore, represents a substantial restriction on the use of special assessments to improve State roads.

LANDLORD AND TENANT RELATIONSHIPS

Relatively little statutory law has been enacted in Ohio that applies exclusively to farm tenancy. Of course, numerous court decisions have established certain precedents. The following discussion relates to tenancy in general and to farm tenancy in particular when the pertinent facts are available.

Most tenancy agreements establish an uncertain interest in the property occupied, in that the interest continues only from month to month or year to year.

The landlord and tenant have a contractual relationship either express or implied. In the absence of a written contract the proof rests on the payment and acceptance of rent although the contract would be presumed to exist on the agreement to pay rent.

Court decisions have upheld the existence of a verbal rental contract although the statutory law of Ohio states that such when dealing with interests in land must be in writing. Therefore, the implication is that the best practice would be to have a rental contract in writing. Specifically,

section 8620 of the General Code states: "Interest in land, etc., to be granted in writing. No lease estate or interest, either of freehold or term of years, or any uncertain interest of, in, or out of lands, tenements, or hereditaments, shall be assigned, or granted except by deed, or note in writing, signed by the party so assigning or granting it, or his agent thereunto lawfully authorized, by writing, or by act and operation of law."

A few court decisions have established precedents which throw a little additional light on the contractual rights of the landlord and tenant. In the case of the B. & O. Ry. v. West, (57 Ohio State p. 161) the decision was that "Entry under a void lease for a term of years and payment of rent create tenancy from year to year". Also, "If tenancy be continued or rent paid after expiration of one year it will create valid lease on same terms for the next year". In the case of Schneider v. Curran (19 Circuit Court 224, 10 Circuit Decisions 241) the decision was that "Holding over under verbal contract cannot exceed the original term". And in the same case it was stated that "a parol lease while tenant is in possession under a prior verbal lease is within the statute of frauds and void". I.e., that a verbal contract covering a rental in a future period would not be valid.

Actions

It was decided in the case of Cullen v. Buckingham (1 O.S. 265) that a party in possession of lands under a parol contract may maintain trespass against the owner.

Section 8621 stipulates that agreements which are not to be performed within one year must be in writing. In one case the decision was given that action on a lease for five years cannot be maintained if the lease is not attested or acknowledged. Richardson v. Bates, 8 O.S. 257.

Termination of tenancy.- Tenants holding over their terms, or tenants in possession under an oral tenancy, who are in default in payment of rent may be legally proceeded against under G. C. 10449 which provides: "If a tenant holding under an oral tenancy is in default in the payment of rent, he shall forfeit his right of occupancy, and the landlord may, at his option, terminate the tenancy by notifying the tenant as provided in G.C. 10451, to leave the premises, for the restitution of which an action may be brought under this chapter".

Section 10451 provides the method of giving notice or service as follows: "A party desiring to commence an action under this chapter (Forcible Entry and Detainer) must notify the adverse party to leave the premises, for the possession of which action is about to be brought, three or more days before beginning the action, by handing a written copy of the notice to the defendant in person, or by leaving it at his usual place of abode. O.L. 113 V. 480, effective July 23, 1929. In the case of Battershall v. Jackson (Ohio Decisions 14 p. 282) it was decided that a notice to vacate premises for default in payment of rent served on the day succeeding the end of the month is proper. After the termination of three days following the serving of notice, suit may be brought before a justice of the peace.

Destruction of a building.- The lessee of a building which without fault or neglect on his part is destroyed or so injured by the elements, or other cause, as to be unfit for occupancy, shall not be liable to pay rent after such destruction or injury, unless otherwise expressly provided by written agreement or covenant. The lessee thereupon must surrender possession of the premises. G.C. 8521. If possession is not surrendered the rent will continue. Or if the premises become uninhabitable by gradual decay from ordinary causes, G.C. 8521 will not apply to entitle the tenant to surrender. A landlord is not required to make repairs unless he has agreed to do so. And if the tenant makes them with no agreement he cannot charge them to the landlord.

Rights, etc., of landlord or tenant in crops.- When lands have been let, reserving rent in kind, and the crops or emblements growing or grown thereon, are levied on or attached by virtue of execution, attachment, or other process, against the landlord or tenant, the interest of such landlord or tenant against whom process was not served shall not be affected thereby. The crops or emblements may be sold, subject to the claim or interest of the landlord or tenant against whom process did not issue. G.C. 10433.

ANIMALS AND FENCES

A Fence Policy Developed

In the early history of the State domestic animals were permitted to graze at large; crops were protected by fencing out rather than by enclosing the livestock in pastures. The transition from the custom of free grazing was first suggested by a law passed in 1814 to regulate grazing of cattle in Fayette County by non-resident cattlemen.

An Act passed by the Legislature in 1805 defined a lawful fence and directed the mode of collecting damages from the owner of livestock breaking through such fence. In 1807 an Act directed that line fences be divided one-half to each adjacent landowner. The method of settling line fence disputes through the offices of township trustees was then provided in practically the same form as exists today.

At an early date the law provided a penalty for the owner of a stallion, jack, bull, boar, or buck who permitted the animal to run at large. Aside from this restriction, farm animals could lawfully run at large until 1865. In that year the policy was changed by enacting a law which specified that livestock could not lawfully run at large on the public road or upon unenclosed land. G.C. 5809. Some exceptions to the above general rule were provided which still exist: (1) county commissioners can grant general permission for any class of livestock, swine excepted, to run at large in the county. (2) or, in counties where no such general permission is granted, the township trustees may grant special annual permits for particular animals to run at large. G.C. 5811.

The laws relative to the disposal of stray animals, the maintenance of township or village pounds, the penalties imposed on stock owners for violations, etc., were developed for the most part before 1870 and have been modified but little since then. In most communities resort to legal measures is seldom applied in such matters.

A few additional facts on fences.- A partition fence of hedge is unlawful except when such line fence is of Osage orange or blackthorn. Without written consent of the adjoining land owner it is unlawful to erect a barbed wire partition fence. This rule does not apply to one or two barbed wires not less than forty-eight inches above the ground when erected on top of another fence. G.C. 5909.

It is the duty of township trustees to settle partition fence disputes by assigning an equal share to each of the adjoining landowners. G.C. 5910. If an owner fails to build his share of the fence the trustees can upon complaint let a contract for a fence and charge the expenses to the landowner to be collected as other taxes. The county recorded shall keep a partition fence record in such cases.

When a boundary line is in a stream the adjoining landowners may be assigned their respective shares of fences to be built by them on their own land near the stream bank and connected by a water gate. Such fence shall be considered a partition fence in determining liability for trespass by domestic animals. G.C. 5921 and 5922.

A landowner who fails to maintain his share of a partition fence is liable for the damage done to the land of a neighbor by trespassing animals which break through the neglected fence. G.C. 5932.

A court decision was that where an owner of cattle does not allow them to run at large, but has them in a pasture properly fenced, such owner is not liable for any penalty by way of damages if they break out. Rudi V. Lang, 12 C.C. 520, 5 C.D. 482.

The size of a hedge fence on a partition line or along a public road must be restricted in height or width to not more than six feet. These dimensions can be exceeded for not more than six months. G.C. 5935.

A landowner may construct a fence, other than barbed wire, leading to the sides of a bridge or culvert situated in a county or State road, provided the county commissioners consent. G.C. 5939.

A landowner is required to cut the bush, briers, thistles, etc., growing on his land within four feet of a line fence; but this does not prevent the planting of trees and vines. G.C. 5942. If after ten days notice by an adjacent landowner the weeds are not cut the matter can be turned over to the township trustees who can let bids for the work of cleaning the fence row and charge the expense to the land owner to be collected the same as taxes. G.C. 5943 and 5944.

Dogs

A dog may be considered property when it has been listed and valued as personal property, the tax paid, if due, and a dog license secured. If such a dog is maliciously killed, damages may be collected in amount not exceeding double the listed tax valuation. G.C. 5837.

A dog that chases, worries, injures or kills a domestic animal or person can be killed any time or place and the owner or harborer shall be liable to a person damaged by the injury done. G.C. 5838. (This provision relative to damages is modified in the circumstances covered by other sections which will be mentioned.) When injury is done and damages decreed, the court or justice can declare the dog a common nuisance and order the defendant to kill it within 24 hours. G.C. 5839.

Payments from dog and kennel fund for damages by dogs.- When livestock (horses, sheep, cattle, swine, mules, and goats) are injured or killed by a dog not belonging to or harbored by the owner of the livestock he is entitled to enter a claim with the county commissioners for damages. A county commissioner should be notified in person or by registered letter within 48 hours after the injury has been discovered. It is the duty of the county dog warden to investigate at once. Within sixty days after the damage the owner shall file a detailed statement with affidavit, with the township trustees, and a duplicate statement must be filed with the county commissioners within sixty days to have a valid claim for compensation out of the dog and kennel fund. Statements of loss must be supported by the testimony of at least two freeholders who viewed the damage. G.C. 5840.

If a dog causing loss is kept or harbored on the premises of the person owning the livestock he may be allowed a claim for his loss provided the dog has been registered for a license and further provided that he destroys the dog within forty-eight hours.

If a dog causing loss is not registered the trustees shall bring action to collect damages from the owner of the dog. G.C. 5841.

Reimbursement of person injured by a mad dog or other animal.- A person injured by an animal suffering from rabies may present an itemized account of his expenses for medical and surgical treatment to the county commissioners who are authorized to pay such expenses up to $200 for any one injury. G.C. 5851 and 5852.

Confinement of dogs.- In 1927 the provision was added to the law that all dogs must be confined to the owner's premises between sunset and sunrise. A fine of ten to twenty-five dollars was provided for violations. G.C. 5652-14a.

Theft of Livestock and Other Farm Products

Motor vehicle transportation has introduced a new situation affecting the problem of livestock thefts. In order to meet this situation General Code Sections 12448-3 and 4 were enacted effective June 10, 1938.

The law now provides that the operator of any vehicle containing livestock, grain, seeds, or wool must furnish any peace officer or highway patrolman with information when demanded, showing the source and destination of the goods and other relevant information. Penalties of fines ranging from $10 to $50 and one to six months imprisonment are provided for refusal to comply with an officer's requests.

A person or agency regularly receiving or dealing in the above products must keep a record showing (1) the name and address of the seller, (2) the name and license number of the vehicle's operator, and (3) the date, kind and quantity of product delivered. The above records must be kept available for inspection of police and highway patrolmen for a period of six months and failure to do so carries a penalty of $10 to $500 fine.

One significant feature of the above Act is empowering the State Highway Patrol to provide enforcement; this being the first divergence from the original policy of using State patrolmen only to enforce the traffic laws.